

1 Jon M. Sands  
2 Federal Public Defender  
3 District of Arizona  
4 Cary Sandman (AZ Bar No. 004779)  
5 Amanda C. Bass (AL Bar No. 1008H16R)  
6 Eric Zuckerman (PA No. 307979)  
7 Assistant Federal Public Defenders  
8 850 West Adams Street, Suite 201  
9 Phoenix, Arizona 85007  
10 cary\_sandman@fd.org  
11 amanda\_bass@fd.org  
12 eric\_zuckerman@fd.org  
13 602.382.2734 Telephone  
14 602.382.2800 Facsimile

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 Clarence Wayne Dixon,  
14 Petitioner,

15 vs.

16 David Shinn, et al.,  
17 Respondents.  
18  
19

No. CV-14-258-PHX-DJH

DEATH-PENALTY CASE

20  
21  
22 **State Court Record**  
23 **Pinal County Superior Court, No. S1100CR202200692**  
24 **Record on Appeal, ROA 30–40**  
25  
26  
27  
28

1 MARK BRNOVICH  
2 ATTORNEY GENERAL  
(FIRM STATE BAR NO. 14000)

3 JEFFREY L. SPARKS  
4 ASSISTANT ATTORNEY GENERAL  
5 CAPITAL LITIGATION SECTION  
6 2005 N. CENTRAL AVENUE  
7 PHOENIX, ARIZONA 85004  
8 TELEPHONE: (602) 542-4686  
9 CLDOCKET@AZAG.GOV  
10 (STATE BAR NUMBER 027536)

11 ATTORNEYS FOR PLAINTIFF

12 **SUPERIOR COURT OF ARIZONA**  
13 **COUNTY OF PINAL**

14 STATE OF ARIZONA,  
15  
16 Plaintiff,  
17  
18 -VS-  
19 CLARENCE WAYNE DIXON,  
20  
21 Defendant.

No. S1100CR202200692

**RESPONSE TO MOTION TO  
DETERMINE MENTAL  
COMPETENCY TO BE EXECUTED**

*Hon. Robert Carter Olson presiding*

**[CAPITAL CASE]**

22 Defendant Clarence Dixon was sentenced to death in 2008 for the 1978 first-  
23 degree murder of Deana Bowdoin. The murder had remained unsolved for decades  
24 until Dixon was tied to it through DNA evidence. Throughout the ensuing PCR  
25 and federal habeas proceedings, his attorneys argued (among other claims), that  
26 Dixon's focus on a legal challenge to his 1985 sexual assault conviction, which  
27 resulted in his DNA later being collected and ultimately matched to the 1978  
28 murder, showed that he had been incompetent to waive his right to counsel and  
represent himself at his trial. But at every stage of PCR and federal review, the  
state and federal courts found that Dixon's focus on that legal challenge, though  
untenable, did not demonstrate a lack of competence. Now, after the Arizona

1 Supreme Court issued a warrant of execution and set an execution date of May 11,  
 2 2022, Dixon requests a determination of his competency to be executed, based  
 3 almost entirely on the same assertion—that Dixon’s focus on the purported flaws  
 4 in his 1985 case that, which was not enough to establish incompetency to waive  
 5 counsel, nonetheless demonstrates that he lacks a rational understanding of the  
 6 State’s rationale for executing him. But just as Dixon failed to demonstrate he was  
 7 incompetent to waive counsel, he likewise has failed to establish reasonable  
 8 grounds for an examination into whether he is competent to be executed. His  
 9 motion should therefore be denied.

#### 10 MEMORANDUM OF POINTS AND AUTHORITIES

##### 11 A. RELEVANT FACTUAL AND PROCEDURAL CONTEXT.

12 In 2008, Dixon was convicted of first-degree murder and sentenced to death  
 13 for the 1978 murder of Deana Bowdoin. In June 1977, Dixon struck a teenage girl  
 14 with a metal pipe and was charged with assault with a deadly weapon. *Dixon v.*  
 15 *Ryan (Dixon IV)*, 932 F.3d 789, 796 (9th Cir. 2019). Two court-appointed  
 16 psychiatrists determined that Dixon was not competent to stand trial under Rule 11,  
 17 noting his schizophrenia and depression. *Id.* After restoration proceedings, Dixon  
 18 waived his right to a jury trial, and the trial court found him not guilty by reason of  
 19 insanity. *Id.* Dixon was released pending civil proceedings on January 5, 1978.  
 20 *Id.*

21 The next day, Deana Bowdoin, a 21-year-old ASU student, was found dead  
 22 in her apartment. *State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶¶ 2–3 (2011).  
 23 She had been strangled with a belt and stabbed. *Id.* Investigators found semen on  
 24 Deana’s underwear but were unable to match the resulting DNA profile to any  
 25 suspect. *Id.*

26 In 1985, Dixon violently sexually assaulted a 20-year-old student near the  
 27 NAU campus in Flagstaff. *State v. Dixon (Dixon I)*, 153 Ariz. 151, 152 (1987).  
 28 The NAU police played a significant role in developing the evidence that resulted

1 in Dixon's arrest and conviction for that crime. The NAU police were called when  
2 the victim returned to her dorm after the assault. *Id.* The victim gave a statement  
3 to an NAU police officer, and the NAU police broadcast an "attempt to locate" call  
4 based on the description of Dixon the victim provided. *Id.* Dixon was ultimately  
5 arrested by a Flagstaff Police Officer who heard the attempt to locate call. *Id.*

6 Following Dixon's arrest, Officer Bolson of the NAU Police Department  
7 showed the victim a photographic lineup in which she identified Dixon. *Id.* at 153.  
8 The NAU officer then allowed the victim to view Dixon through a window, and  
9 she once again identified him as her assailant. *Id.* at 153–54. Dixon was convicted  
10 of seven felony offenses and sentenced to multiple life sentences. *Id.* at 152.

11 In 2001, a Tempe Police detective checked the DNA profile from the semen  
12 on Deana Bowdoin's underwear and found that it matched that of Dixon, whose  
13 DNA profile was in a national database as a result of his 1985 convictions. *Dixon*  
14 *II*, 226 Ariz. at 548, ¶ 4; *Dixon IV*, 932 F.3d at 796. Dixon had lived across the  
15 street from Deana at the time of the murder, and her friends and family knew of no  
16 previous contact between them. *Dixon II*, 226 Ariz. at 548–49, ¶ 4.

17 Dixon was charged with first degree murder. *Dixon II*, 226 Ariz. at 549, ¶ 5.  
18 Before trial, Dixon sought to represent himself because his appointed counsel  
19 would not file a motion he requested them to file. *Dixon IV*, 932 F.3d at 797. The  
20 legal theory Dixon sought to pursue was that "the DNA evidence linking Dixon to  
21 [Deana's] murder should be suppressed as fruit of the poisonous tree because it  
22 was obtained in connection with his 1985 assault conviction. The 1985 conviction  
23 itself was invalid, Dixon believed, because the campus police lacked the authority  
24 to investigate." *Id.*; see also *Dixon v. Ryan (Dixon III)*, 2016 WL 1045355, \*5 (D.  
25 Ariz. March 16, 2016) ("This issue involved Dixon's theory that NAU officers  
26 lacked the statutory authority to investigate the case; therefore, according to Dixon,  
27 his prior conviction was 'fundamentally flawed' and the DNA comparison made  
28 pursuant to his invalid conviction should be suppressed."). After conducting a



1 colloquy with Dixon, the trial court found that Dixon “knowingly, intelligently,  
2 and voluntarily waived” his right to counsel, and Dixon represented himself at  
3 trial. *Dixon IV*, 932 F.3d at 797–98.

4 Dixon was convicted of first degree murder and sentenced to death. *Dixon*  
5 *II*, 226 Ariz. at 549, ¶ 5. Throughout the ensuing years, Dixon argued that his 1977  
6 Rule 11 proceedings, 1978 not guilty by reason of insanity verdict, and  
7 “perseveration” on the DNA suppression issue regarding the NAU police showed  
8 his lack of competency to waive counsel. The state and federal courts uniformly  
9 rejected these challenges. In Dixon’s PCR proceeding, the postconviction judge,  
10 who had presided over Dixon’s trial, noted that Dixon’s “thoughts and actions”  
11 throughout the trial proceedings “demonstrated coherent and rational behavior.”  
12 *Dixon III*, 2016 WL 1045355, at \*12.

13 In its 2019 opinion, the Ninth Circuit found that because Dixon’s  
14 competency and mental health were not at issue with respect to the 1985 assault  
15 and resulting conviction, “[t]he 1977 evaluations and the 1978 not guilty by reason  
16 of insanity verdict thus shed little light on Dixon’s competence at the time he chose  
17 to waive counsel in 2006.” *Dixon IV*, 932 F.3d at 803. The court noted that the  
18 record in his capital case contained “no evidence of competency issues at any time  
19 throughout the course of these proceedings,” and that the record demonstrated that  
20 at the time Dixon sought to represent himself he “understood the charges against  
21 him and the potential sentences, he was able to articulate his legal positions and  
22 respond to questions with appropriate answers, and that Dixon demonstrated  
23 rational behavior.” *Id.* Significantly, the court stated that Dixon’s interest in the  
24 DNA suppression issue “was not so bizarre or obscure as to suggest that Dixon  
25 lacked competence.” *Id.*

26 The district court had likewise concluded that “Dixon’s obsession with the  
27 NAU suppression motion was not so bizarre as to suggest incompetence”:  
28

1 “Criminal defendants often insist on asserting defenses with little  
 2 basis in the law, particularly where, as here, there is substantial  
 3 evidence of their guilt,” but “adherence to bizarre legal theories” does  
 4 not imply incompetence. *United States v. Jonassen*, 759 F.3d 653, 660  
 5 (7th Cir. 2014) (noting defendant's “persistent assertion of a  
 6 sovereign-citizen defense”); see *United States v. Kerr*, 752 F.3d 206,  
 7 217-18 (2d Cir.), *as amended* (June 18, 2014) (“Kerr's obsession with  
 8 his defensive theories, his distrust of his attorneys, and his belligerent  
 9 attitude were also not so bizarre as to require the district court to  
 10 question his competency for a second time.”). “[P]ersons of  
 11 unquestioned competence have espoused ludicrous legal  
 12 positions,” *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003),  
 “but the articulation of unusual legal beliefs is a far cry from  
 incompetence.” *United States v. Alden*, 527 F.3d 653, 659–60 (7th  
 Cir. 2008) (explaining that defendant's “obsession with irrelevant  
 issues and his paranoia and distrust of the criminal justice system” did  
 not imply mental shortcomings requiring a competence hearing).

13 *Dixon III*, 2016 WL 1045355 at \*9.

14 Now, based almost entirely on his continued focus on the same DNA  
 15 suppression issue that failed to establish his lack of competency to waive counsel,  
 16 Dixon contends that he is incompetent to be executed.

#### 17 **B. LEGAL FRAMEWORK.**

18 Arizona law prohibits the execution of a defendant who is “mentally  
 19 incompetent to be executed” and defines that phrase to mean that “due to a mental  
 20 disease or defect a person who is sentenced to death is presently unaware that he is  
 21 to be punished for the crime of murder or that he is unaware that the impending  
 22 punishment for that crime is death.” A.R.S. § 13–4021. The Eighth Amendment  
 23 similarly “prohibits the State from inflicting the penalty of death upon a prisoner  
 24 who is insane.” *Ford v. Wainwright*, 477 U.S. 399, 410 (1986). As explained by  
 25 the Supreme Court, a prisoner is incompetent to be executed whose “‘mental state  
 26 is so distorted by a mental illness’ that he lacks a ‘rational understanding’ of ‘the  
 27 State’s rationale for [his] execution,’” or whose “‘concept of reality’ is ‘so  
 28

1 impair[ed]’ that he cannot grasp the execution’s ‘meaning and purpose’ or the ‘link  
2 between [his] crime and its punishment.’” *Madison v. Alabama*, 139 S. Ct. 718,  
3 723 (2019) (quoting *Panetti v. Quarterman*, 551 U.S. 930, 958–60 (2007)).

4 Upon receipt of a motion for examination of competency to be executed, the  
5 superior court must determine whether the motion is timely<sup>1</sup> and “presents  
6 reasonable grounds for the requested examination.” A.R.S. § 13–4022(C). If so,  
7 the court must appoint experts to evaluate whether the prisoner is incompetent to  
8 be executed and would benefit from restoration treatment. *Id.* A prisoner who is  
9 sentenced to death is “presumed to be competent to be executed” and may be  
10 found incompetent “only on clear and convincing evidence of incompetency.” *Id.*  
11 § 13–4022(F).

12 **C. DIXON HAS NOT PRESENTED REASONABLE GROUNDS FOR A COMPETENCY**  
13 **DETERMINATION.**

14 Ultimately, Dixon contends he is incompetent to be executed based on the  
15 same theory he has for years unsuccessfully asserted shows that he was  
16 incompetent to waive counsel and represent himself at trial. But as the Maricopa  
17 County PCR Court, federal district court, and Ninth Circuit unanimously  
18 concluded, Dixon’s focus on that issue, though legally untenable, failed to  
19 demonstrate a lack of competency. In fact, in this context, it demonstrates the  
20 opposite—Dixon’s belief that the DNA suppression legal theory will exonerate  
21 him shows he has a rational understanding that the State seeks to execute him  
22 based on his conviction of first-degree murder.

23 Dixon’s current expert, Dr. Amezcua-Patino concedes that Dixon “can  
24 verbalize a surface awareness that the State intends to execute him for a crime that  
25

---

26 <sup>1</sup> The State does not dispute that Dixon’s motion for examination of competency is  
27 timely because he filed it more than 20 days before his scheduled execution. *See*  
28 A.R.S. § 13–4024(A).

1 occurred in 1978 and for which he was convicted,” but nonetheless concludes that  
2 Dixon “lacks a rational understanding of the State’s reason for his execution”  
3 because he “ultimately believes that he will be executed because the NAU police  
4 wrongfully arrested him in 1985 and the judicial system—and actors in it,  
5 including his own lawyers—have conspired to cover up that fact.” Motion, Exhibit  
6 9, at 13. It is unclear, however, how Dr. Amezcua-Patino concludes that Dixon  
7 believes he will be executed as the result of a wrongful arrest rather than because  
8 he was convicted of first-degree murder. In fact, Dixon’s own words to the expert  
9 show his rational understanding of the reason for his execution: Dr. Amezcua-  
10 Patino reported that Dixon told him that “The State is trying to execute me,” “They  
11 charged me with first-degree murder in 2002,” and “they just want to kill me for  
12 murder.” Motion, Exhibit 9, at 6.

13 Dixon’s focus on the legal theory challenging the DNA evidence as the fruit  
14 of a purportedly unlawful arrest in fact demonstrates that he rationally understands  
15 that the State seeks to execute him based on his conviction of the 1978 murder. In  
16 a pro se petition for writ of certiorari Dixon filed in November 2021 asserting this  
17 claim, Dixon acknowledged that he was found guilty of the murder of Deana  
18 Bowdoin and sentenced to death for that crime. Exhibit 1, Petition for Writ of  
19 Certiorari, at 3. He proceeded to argue that his murder conviction was invalid  
20 because the NAU Police Department lacked jurisdictional authority to investigate  
21 the 1985 sexual assault. *Id.* at 3–7.

22 Though legally unviable, Dixon’s claim makes rational and logical sense.  
23 Dixon was charged and convicted of the 1978 murder because DNA from the  
24 crime scene matched Dixon’s profile in a national database. *Dixon II*, 226 Ariz. at  
25 548, ¶ 4. Dixon’s DNA profile was in the database as a result of his 1985 sexual  
26 assault convictions. *Id.* Thus, if his arrest and resulting conviction in the 1985  
27 case was flawed, his DNA profile should not have been obtained and placed in the  
28 database, and thus his profile never should have been matched to DNA present at

1 the 1978 crime scene. This theory, though legally flawed because Dixon is  
 2 incorrect that the NAU police lacked authority to investigate the 1985 offense,  
 3 nonetheless follows a chain of logic and attacks the basis for Dixon's scheduled  
 4 execution, his conviction of first-degree murder. Dixon's attempts to invalidate his  
 5 murder conviction thus demonstrate a rational understanding of why the State  
 6 seeks to execute him.

7 Dixon asserted in his PCR and federal habeas proceedings that his focus on  
 8 this legal theory demonstrated that he was incompetent to waive the right to  
 9 counsel and represent himself. But the state and federal courts uniformly  
 10 disagreed, finding that nothing about Dixon's legal theory suggested  
 11 incompetence. *See Dixon III*, 2016 WL 1045355, at \*9, \*12; *Dixon IV*, 932 F.3d at  
 12 803. In fact, the federal district court cited to numerous court of appeals decisions  
 13 concluding that belief in unusual legal theories fails to imply incompetence. *Dixon*  
 14 *III*, 2016 WL 1045355, at \*9 (citing *United States v. Jonassen*, 759 F.3d 653, 660  
 15 (7th Cir. 2014); *United States v. Kerr*, 752 F.3d 206, 217-18 (2d Cir.), *as*  
 16 *amended* (June 18, 2014); *United States v. James*, 328 F.3d 953, 955 (7th Cir.  
 17 2003); *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008)).

18 In addition, Dixon's motion mischaracterizes the nature of his claim in an  
 19 attempt to present it as more irrational than it actually is. It claims that Dixon  
 20 believes "that the incident leading to his 1985 conviction for the assault on the  
 21 NAU student resulted from a wrongful arrest by the NAU Police—an agency he  
 22 believed not to be legal entity," then calls these beliefs "delusional" because "the  
 23 NAU Police Department was a legal entity" and Dixon was actually arrested "by  
 24 the Flagstaff City Police." Motion, at 6 (underline in original). Dr. Amezcua-  
 25 Patino repeats this flawed mischaracterization. Motion, Exhibit 9, at 12.<sup>2</sup> But  
 26

---

27 <sup>2</sup> Dr. Amezcua-Patino wrote: "Clarence holds a fixed delusional belief that his  
 28 incarceration, conviction, and forthcoming execution stem from his wrongful arrest  
 (continued ...)

1 Dixon's recent certiorari petition, for example, made no mention of his arrest.  
 2 Instead, he noted that the NAU Police "investigated," "interviewed witnesses and  
 3 the victim, gathered evidence, obtained two search warrants and a court order and  
 4 testified at trial as peace officers," and argued that this was impermissible because  
 5 the NAU Police lacked authority to investigate off-campus. Exhibit 1, Petition for  
 6 Writ of Certiorari, at 4. While he is wrong about the NAU Police's authority,  
 7 Dixon was correct that the NAU Police conducted much of the investigation that  
 8 led to his arrest by a Flagstaff Police Officer and conviction.<sup>3</sup> *See Dixon I*, 153  
 9 Ariz. at 152–54. Dixon's legal theory is thus much more logical, rational, and  
 10 based in the reality of his 1985 offenses than his counsel and Dr. Amezcua-Patino  
 11 attempt to characterize it.

12 Just as it was insufficient to imply that Dixon was incompetent to waive  
 13 counsel at trial, Dixon's focus on the NAU police/DNA suppression issue does not  
 14 establish reasonable grounds for a determination of competency to be executed.  
 15 And rather than suggest incompetence, his focus on that claim and Dr. Amezcua-  
 16 Patino's report in fact demonstrate that Dixon has a rational understanding of the  
 17 State's rationale for his execution. *Madison*, 139 S. Ct. at 723. He has therefore  
 18 failed to establish reasonable grounds for a competency examination, and his  
 19 request should be denied.

20 ///

21 ///

22 ///

23  
 24 \_\_\_\_\_  
 (... continued)

25 by the NAU police in 1985. That belief has no basis in fact—since it was the  
 26 Flagstaff Police, *not* the NAU police, that arrested him." Motion, Exhibit 9, at 12.

27 <sup>3</sup> And even if Dixon believes the NAU police, rather than the Flagstaff police  
 28 arrested him, that would not imply an irrational thought, but simply a factual  
 mistake.



1 RESPECTFULLY SUBMITTED this 13th day of April, 2022.

2 Mark Brnovich  
3 Attorney General

4  
5 /s/Jeffrey L. Sparks  
6 Acting Chief Counsel,  
7 Capital Litigation Section

8 Attorneys for Plaintiff  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2022, I electronically filed the foregoing with the Clerk of the Maricopa County Superior Court by using the Court's eFiling Online System.

Copies of the foregoing were electronically mailed this date to:

JON M. SANDS  
Federal Public Defender

CARY SANDMAN  
AMANDA BASS  
Assistant Federal Public Defenders  
407 W. Congress, Suite 501  
Tucson, Arizona 85701  
[cary\\_sandman@fd.org](mailto:cary_sandman@fd.org)  
[Amanda\\_bass@fd.org](mailto:Amanda_bass@fd.org)  
Attorneys for Defendant

COLLEEN CLASE  
Chief Counsel  
Arizona Voice for Crime Victims  
[Colleen.avcv@gmail.com](mailto:Colleen.avcv@gmail.com)  
Attorney for Crime Victim

/s/ Liz Gallagher

SDPRCQWM0FHWW1

**EXHIBIT**

NOV 10 2021

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

CLARELL E. DAWSON — PETITIONER  
(Your Name)

VS.  
STATE of ARIZONA, ET AL — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

AZ Supreme Court . . . U.S. SUPREME COURT NO. 19-8022  
U.S. DISTRICT COURT NO. CV-14-00258-PHX-CKJ

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court. NO

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and: NO

☒ The appointment was made under the following provision of law: Rule 39, Rules of Supreme Court and 18 U.S.C. § 3599(A)(2) district court + 9th Cir. or

☒ a copy of the order of appointment is appended.

[Signature]  
(Signature)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Clarence Wayne Dixon,  
Petitioner,

vs.

Charles L. Ryan, et al.,  
Respondents.

No. CV-14-00258-PHX-CKJ

DEATH PENALTY CASE

ORDER OF APPOINTMENT  
AND GENERAL PROCEDURES

**IT IS ORDERED** that Petitioner's Motion for Appointment of Counsel (Doc. 4) is **GRANTED**. Jon M. Sands, Federal Public Defender for the District of Arizona, is appointed as Counsel for Petitioner in this federal habeas corpus proceeding. The Federal Public Defender is authorized to designate an Assistant Federal Public Defender to handle the case. Appointment is made pursuant to 18 U.S.C. § 3599(a)(2). Counsel shall not represent Petitioner in state forums or prepare any state court pleadings without express authorization of the Court.

**IT IS FURTHER ORDERED** that Petitioner's Application to Proceed *In Forma Pauperis* (Doc. 3) is **GRANTED**.

**IT IS FURTHER ORDERED** that the designated Assistant Federal Public Defender shall file a notice of appearance or substitution with the Court within **ten (10) days** from receipt of this Order.

**IT IS FURTHER ORDERED** that the Arizona Attorney General shall file a notice

53

IN THE SUPERIOR COURT  
STATE OF ARIZONA - COUNTY OF MARICOPA

STATE OF ARIZONA  
VS.  
CLARENCE WAYNE DIXON

BOOKING # A896911  
CASE # \_\_\_\_\_

Defendant

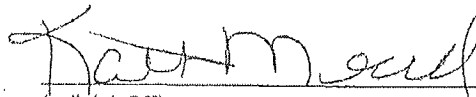
ORDER REGARDING COUNSEL

THE COURT FINDS AND ORDERS:

- ☒ 1. Defendant is indigent. The following legal counsel is appointed to represent the Defendant.  
The defendant shall contact the below listed office or lawyer within 2 days of release of jail.
- ☒ Maricopa County Public Defender 11 W Jefferson, Luhrs Building, First Floor, Suite 5,  
Phoenix, AZ. 602-506-7711 Monday-Friday 8 a.m. to 4:30p.m. except holidays.
- ☐ Legal Defender 222 N. Central, Suite 910, Phoenix, AZ 602-506-8800
- ☐ Legal Advocate 411 N. Central, Suite 900, Phoenix, AZ 602-506-4111
- ☐ Office of Contract Counsel (OCC) 411 N. Central, Suite 900,  
Phoenix, AZ 602-506-7437.
- ☐ Lawyer \_\_\_\_\_ Address \_\_\_\_\_  
City \_\_\_\_\_, Arizona \_\_\_\_\_ Phone \_\_\_\_\_
- ☐ 2. Defendant is not indigent and is financially able to pay for a lawyer. Defendant has/has not  
advised the Court that he/she will hire a lawyer.
- ☐ 3. Defendant is indigent. COUNSEL TO BE DETERMINED BEFORE THE NEXT COURT DATE.
- ☐ 4. Defendant is NOT entitled to court appointed counsel due to nature of the charge. Rule 6.1(a),  
Arizona Rules of Criminal Procedure.

WARNING: If the defendant appears at the next hearing without a lawyer, the hearing may still proceed as  
scheduled.

1-23-03, 20\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Judicial Officer



JFP AFFIDAVIT OF

CLARENCE WAYNE DIXON

I, CLARENCE WAYNE DIXON, UNDER PENALTY OF PERJURY, DO

DECLARE AND AFFIRM THE FOREGOING STATEMENTS AND FACTS

ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF,

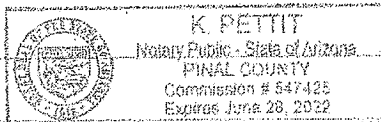
1. SWORN TO THIS 21 DAY OF SEPTEMBER 2021.

Clarence W. Dixon  
CLARENCE W. DIXON, 038977

State of Arizona  
County of Pinal

Subscribed and sworn before me this 21st  
day of September 2021 by Clarence W  
Dixon.

[Signature] - Notary  
Public



**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, CLARENCE WAYNE NIXON, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ _____	\$ _____	\$ _____	\$ _____
Self-employment	\$ _____	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ <u>50.00</u>	\$ _____	\$ <u>0</u>	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
<b>Total monthly income:</b>	\$ <u>50.00</u>	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$_____	\$_____
Recreation, entertainment, newspapers, magazines, etc.	\$_____	\$_____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$_____	\$_____
Life	\$_____	\$_____
Health	\$_____	\$_____
Motor Vehicle	\$_____	\$_____
Other: _____	\$_____	\$_____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$_____	\$_____
Installment payments		
Motor Vehicle	\$_____	\$_____
Credit card(s)	\$_____	\$_____
Department store(s)	\$_____	\$_____
Other: _____	\$_____	\$_____
Alimony, maintenance, and support paid to others	\$_____	\$_____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$_____	\$_____
Other (specify): _____	\$_____	\$_____
<b>Total monthly expenses:</b>	\$ <u>10</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

4. How much cash do you and your spouse have? \$ 1,390.<sup>00</sup>  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home  
Value \_\_\_\_\_

☐ Other real estate  
Value \_\_\_\_\_

☐ Motor Vehicle #1  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

☐ Motor Vehicle #2  
Year, make & model \_\_\_\_\_  
Value \_\_\_\_\_

☐ Other assets  
Description \_\_\_\_\_  
Value \_\_\_\_\_

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ _____	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

*I'm an unemployable blind prisoner of state - Az.*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: SEPT. 22, 2021, 20\_\_\_\_

*Charm W. Dixon*

\_\_\_\_\_  
(Signature)



CLARENCE W. DIXON, 038977

ARIZONA STATE PRISON, BOX 8200

FLORENCE, AZ 85132

IN PROPRIA PERSONA

IN THE SUPREME COURT OF THE UNITED STATES

CLARENCE WAYNE DIXON,

NO. \_\_\_\_\_

PETITIONER.

PETITION FOR WRIT OF

V.

CERTIORARI TO THE

STATE OF ARIZONA, ET AL,

ARIZONA SUPREME COURT

RESPONDENT.

(DEATH SENTENCE CASE)

A

## TABLE OF CONTENTS

### TABLE OF CONTENTS

pg. I

### I. INTRODUCTION

pg. 1

### II. QUESTION PRESENTED

pg. 1

### III. FACTS AND LAW

pg. 3

### IV. CONCLUSION

pg. 7

## APPENDIX

### TABLE OF CONTENTS

#### APPENDIX A - ORDER DENYING PETITION FOR WRIT

OF HABEAS CORPUS MAY 21, 2021

#### APPENDIX B - ORDER DENYING MOTION FOR RECONSIDERATION, MAY 24, 2021

#### APPENDIX C - PETITION FOR POST-CONVICTION RELIEF,

TABLE OF CONTENTS-CONT

APPENDIX-CONT

APPENDIX C - PCR PETITION FILED JUL 31, 1991

APPENDIX D - ~~WALTON~~ <sup>WALTON</sup> ~~IP~~ <sup>IP</sup> ~~SCHESS~~ <sup>SCHESS</sup> DNA EVIDENCE

APPENDIX E - ARIZONA REVISED STATUTES 1-215(23) (1981)

AND B-1627(1981)

APPENDIX F - AFFIDAVIT OF CLARENCE W. DIXON

## TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION, AMENDMENTS 4,

6, 8 AND 14

pg. 1

ARIZONA CONSTITUTION

pg. 1

ARIZONA STATUTES: ARS 1-215<sup>(23)</sup> (1981) ARS 15-1627 (1981)

pg. 5

STATE V. DIXON, 153 ARIZ., 151 (1987)

pg. 3

STATE V. DIXON, 226 ARIZ., 545 (2011)

pg. 3

STATE V. BREWER, 170 ARIZ., 486 (1992)

pg. 5

CORPUS JURIS SECUNDUM

pg. 5

## I. INTRODUCTION

PETITIONER CLARENCE WAYNE DIXON IS A DEATH ROW PRISONER whom the state is actively seeking an execution date. ~~THIS PETITION FOR THE WRIT OF CERTIORARI~~ IS SUPPORTED BY THE 4TH,

6TH, 8TH, AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION. THIS

PETITION IS ALSO SUPPORTED BY <sup>CONSTITUTION</sup> ARIZONA STATUTES AND BLACK

LETTER LAW. BEING TOTALLY BLIND, PETITIONER DIXON BEES THE

COURTS INDULGENCE.

## II. QUESTION PRESENTED

SINCE 1991, WHEN PETITIONER DIXON (DIXON) DISCOVERED THAT

THAT ARIZONA'S UNIVERSITIES' CAMPUS POLICE WERE NOT FULLY

EQUIPPED ~~WITH~~ WITH LAW ENFORCEMENT POWERS, DIXON HAS SOUGHT

RELIEF IN COCONINO COUNTY SUPERIOR COURT MARICOPA COUNTY

2

SUPERIOR COURT, COURT OF APPEALS, DIVISION ONE, AND THE

ARIZONA SUPREME COURT. ALL PETITIONS WERE DENIED WITHOUT

STATEMENTS OF FACT AND CONCLUSIONS OF LAW. SUPPORTING THE DENIALS

FOUR POST-CONVICTION RELIEF PETITIONS AND ONE SPECIAL ACTION

HAVE NOT BROUGHT ANY STATE JUDGE OR JUSTICE TO READ OR ANALYZE

THE LAW AS IT STOOD IN JUNE 1985.

THE QUESTION PRESENTED BY THIS PETITION, BY THIS PETITION FOR

WRIT OF HABEAS CORPUS IS THE FOLLOWING... DOES THE SUPREME

COURT HAVE JURISDICTION TO ADMINISTER JUSTICE WHERE A THREE-

TIER COURT SYSTEM, DELIBERATELY AND SYSTEMATICALLY

DEPRIVE A PRISONER SENTENCED TO DEATH THE RIGHT TO DUE

PROCESS AND EQUAL PROTECTION, BY INTENTIONALLY IGNORING THE LAW

WHICH CLEARLY BENEFITED THE PRISONER. P

23

### III. FACTS AND LAW

ON JANUARY 24, 2008, IN MARICOPA COUNTY SUPERIOR COURT, A JURY

FOUND DIXON GUILTY OF THE MURDER OF DEANNA L. BORDOW. AND

SENTENCED HIM TO DEATH. BEFORE TRIAL DIXON SOUGHT TO HAVE DNA

AND VICTIM TESTIMONY EXCLUDED AS POISONED FRUIT. SAID MOTION WAS

IN JUNE 1985

DENIED <sup>IN</sup> ~~JUNE 1985~~ AJS WAS KIDNAPED AND SEXUALLY ASSAULTED

AND DIXON WAS FOUND GUILTY AND SENTENCED TO SEVEN CONSECUTIVE LIFE

SENTENCES FOR THE ASSAULT.

STATE V. DIXON, 153 ARIZ. 137 (1987).

IN 1997 A COLD CASE DETECTIVE ~~WAS~~ HAD A DNA HIT THAT

MATCHED DNA FOUND ON DEANNA L. BORDOW'S PAJAMAS. STATE

V. DIXON, 226 ARIZ. 545 (2011).

VICTIM AJS WAS A NORTHERN ARIZONA UNIVERSITY (NU) STUDENT

OFF-CAMPUS. THE ASSAULT OCCURRED ON JUNE 10, 1985. THE ASSAULT OCCURRED

B 4

ONE HUNDRED TO ONE HUNDRED FIFTY YARDS SOUTH OF LONE TREE ROAD

AT THE BEND APPROXIMATELY TWO TO THREE HUNDRED YARDS SOUTH OF

THE INTERSTATE 40 OVERPASS RUNNING EAST TO WEST. THE CRIME SCENE

IS OFF-CAMPUS.

THE N.A.U. SECURITY OFFICERS INVESTIGATED. THEY INTER-

VIEWED WITNESSES AND THE VICTIM, GATHERED EVIDENCE, OBTAINED TWO

SEARCH WARRANTS AND A COURT ORDER AND TESTIFIED AT TRIAL AS

PEACE OFFICERS.

THE N.A.U. SECURITY OFFICERS WERE WITHOUT JURISDICTION

BECAUSE ARIZONA STATUTE ALLOWED FOR ONLY ON-CAMPUS

INVESTIGATIONS. APPENDIX.

THE STATUTE THAT <sup>gives</sup> POWER AND AUTHORITY TO THE

UNIVERSITIES' SECURITY OFFICERS IS STRAIGHT FORWARD CAMPUS SECURITY



5  
OFFICERS WERE LIMITED TO ON-CAMPUS GROUNDS AND ACTIVITIES.

SEE APPENDIX. THIS LIMITATION IN AUTHORITY AND POWER

IS BUTTRESSED BY A.R.S. 1-215(23)(1981), (DEFINITION OF WHO IS A PEACE

OFFICER). SEE APPENDIX. E THAT STATUTE DOES NOT INCLUDE

CAMPUS SECURITY OFFICERS IN THE DEFINITION OF WHO IS A PEACE OFFICER.

BLACK LETTER LAW CONTAINED IN CORPUS JURIS SECUNDUM. JURISDICTION

PLAINLY STATES THAT ISSUES OF JURISDICTION MAY BE BROUGHT AT ANY TIME.

IN 1992 THE ARIZONA SUPREME COURT SAID THAT IT MUST

SCRUTINIZE CLOSELY WHERE A DEATH SENTENCE HAS BEEN

IMPOSED. STATE V. BREWER, 170 ARIZ. 436 (1992).

THE JURORS HEARD THE PROSECUTOR LIE. THAT DAVIS DNA WAS ON

THE MURDER WEAPON, HEARD THE PROSECUTOR NOT BE ABLE TO PROVE  
PER

DIXON AT THE CRIME SCENE, WAS NEVER GIVEN REASONS WHY THE

BOYFRIEND'S BROTHER AND ANOTHER PERSON'S DNA WERE FOUND ON THE

BEDSPREAD IN A <sup>WET</sup> SOFTBALL SIZE SPOT IN CLOSE PROXIMITY <sup>TO THE</sup> BODY, WAS NOT

NOT TOLD THE VICTIM WAS SEXUALLY ACTIVE BEYOND THE BOYFRIEND'S

KNOWLEDGE; ALL OF WHICH WAS INSTANTLY NEGATED AS TO

REASONABLE DOUBT WHEN AJS TESTIFIED. THE CHALLENGED VICTIM

FESTIVELY ADMITTED IN DIXON'S 2007-08 TRIAL REMOVED ANY

REASONABLE DOUBT ARGUMENTS AND FACTS WITH AS FATAL

PREJUDICE AND BIAS WEIGHT. THE ARIZONA SUPREME COURT KNOWINGLY

AND WILLINGLY USED AN UNLAWFUL AND UNCONSTITUTIONAL CONVICTION

TO AFFECT A STATUTORY EXECUTION MANIFESTING MAJESTY AFORE-

THOUGHT.

7

FURTHER, A READING OF A.R.S. 15-162(1981) OFFERS CLEAR GUIDANCE  
 WHERE UNIVERSITY SECURITY OFFICERS WERE HELD, AND A DELIBERATE  
 MISREADING OF THIS STATUTE BY NOT ONE BUT BY MANY AND ALL JUDGES  
 AND JUSTICES INDICATES PITHA FACE BIAS AND PREJUDICE. LATELY  
 A WHOLE BLOCK OF JURIS MUSTER DILIGENTLY, THEN SUPREME  
 COURT OVERSIGHT IS AS SHOULD BE MANDATORY. (NEW LAW?)

1. A NON-PERFECT CRIMINAL TRIAL, WHERE THE PERFECT PENALTY  
 OF EXECUTION IS PRESENT, (CONSTITUTIONAL GUARANTEES AND THE RULES  
 LAW CANNOT BE ABSENT.

DIXON SOUGHT SELF-REPRESENTATION AT TRIAL BECAUSE HIS COUNSEL AND  
 ATTORNEYS WOULD NOT RAISE THE PLACE JURISDICTION CLAIM ISSUE ON MATTER IN  
 COURT. SINCE THAT DIXON HAS COOPERATED THIS UNWILLINGNESS BY DEFENSE  
 COUNSEL TO ADVANCE THIS CLAIM ISSUE. SEE APPENDIX F.

II. CONCLUSION

DIXON REQUESTS THIS COURT REMAND THIS CASE BACK TO THE

ARIZONA SUPERIOR COURT, WITH INSTRUCTIONS TO ACT IN ACCORDANCE

WITH THIS COURT'S DECISION.

RESPECTFULLY SUBMITTED THIS 11<sup>TH</sup> DAY OF NOVEMBER 2021,

*Clarence W. Dixon*

CLARENCE W. DIXON, 038977

# Appendix A

SUPREME COURT OF ARIZONA

CLARENCE WAYNE DIXON,	)	Arizona Supreme Court
	)	No. HC-21-0007
Petitioner,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR2002-019595-001
DAVID SHINN, DIRECTOR OF	)	
DEPARTMENT OF CORRECTIONS,	)	FILED 05/21/2021
	)	
Respondent.	)	
	)	
	)	

---

O R D E R

Clarence Dixon has filed a *pro se* Petition for Writ of Habeas Corpus. The Court takes original jurisdiction of this habeas corpus matter and finds that the claims presented are factually unsupported, meritless, and precluded. Therefore,

**IT IS ORDERED** that the Petition for Writ of Habeas Corpus is denied.

**IT IS FURTHER ORDERED** that the Motion to Transfer Petition for Writ of Habeas Corpus to Maricopa County Superior Court is denied as moot.

DATED this 21<sup>st</sup> day of May, 2021.

For the Court:

/s/  
ROBERT BRUTINEL  
Chief Justice

Justice Lopez and Justice Beene did not participate in the determination of this matter.

Arizona Supreme Court No. HC-21-0007

Page 2 of 2

TO:

Lacey Stover Gard

Jeffrey L Sparks

Myles A Braccio

Cary S Sandman

Clarence Wayne Dixon, ADOC 038977, Arizona State Prison, Florence -

Central Unit

Colleen Clase

Dale A Baich

Amy Armstrong

Michele Lawson

## Appendix B



SUPREME COURT OF ARIZONA

CLARENCE WAYNE DIXON,	)	Arizona Supreme Court
	)	No. HC-21-0007
Petitioner,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR2002-019595-001
DAVID SHINN, DIRECTOR OF	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	FILED: 06/14/2021
Respondent.	)	
	)	
	)	

---

O R D E R

On May 21, 2021, this Court denied Clarence Dixon's pro se Petition for Writ of Habeas Corpus. On June 4, 2021, Petitioner Dixon filed a "Motion for Reconsideration." Upon consideration,

IT IS ORDERED that the motion for reconsideration is denied.

DATED this 14<sup>th</sup> day of June, 2021.

For the Court:

/s/  
\_\_\_\_\_  
ROBERT BRUTINEL  
Chief Justice

Justice Lopez and Justice Beene did not participate in the determination of this matter.

Arizona Supreme Court No. HC-21-0007

Page 2 of 2

TO:

Lacey Stover Gard

Jeffrey L Sparks

Myles A Braccio

Cary S Sandman

Clarence Wayne Dixon, ADOC 038977, Arizona State Prison, Florence -  
Central Unit

Colleen Clase

Dale A Baich

Amy Armstrong

Michele Lawson

ga

# Appendix C

IN THE SUPERIOR COURT OF THE STATE OF

IN AND FOR THE COUNTY OF COCONINO

SHIRLEY F. STEVENSON, CLERK  
DEPUTY

91 JUL 31 PM 12:05

FILED

STATE OF ARIZONA,

Plaintiff,

vs.

CLARENCE WAYNE DIXON,

Defendant(s).

No. 116-54

PETITION FOR POST-CONVICTION RELIEF

INSTRUCTIONS: In order for this petition to receive consideration by the court, each applicable question must be answered fully but concisely in legible handwriting or by typing. When necessary, an answer to a particular question may be completed on the reverse side of the page or on an additional blank page, making clear to which question such continued answer refers.

Any false statement of fact made and sworn to under oath in this petition could serve as the basis for prosecution and conviction for perjury. Therefore, exercise care to assure that all answers are true and correct.

A person unable to pay costs of this proceeding and obtain services of counsel without incurring substantial hardship to himself or his family should complete the Defendant's Financial Statement and Request for Appointed Counsel attached to this petition.

NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED ON APPEAL OR IN A PREVIOUS PETITION MAY BE USED AS A BASIS FOR THIS PETITION.

TAKE CARE TO INCLUDE EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY, SINCE FAILURE TO RAISE ANY SUCH GROUND IN THIS PETITION WILL BAR ITS BEING RAISED LATER.

When the petition is complete, mail it to the clerk of the superior court of the county in which conviction occurred.

1. Petitioner's Name: Clarence Wayne Dixon

Petitioner's prison number (if any): 38977

2. Petitioner is now (A) ☐ On Parole

(B) ☐ On Probation

(C) ☒ Confined in Arizona State Prison-Tucson

## PETITION FOR POST-CONVICTION RELIEF

Page 2

3. (A) Petitioner was convicted of the following crimes: CT 1-Aggravated Assault  
ARS 13-1204, CT 2-Kidnapping ARS 13-1304, CT 3-Sexual Abuse ARS  
13-1404, and CTS 4-7-Sexual Assault ARS 13-1406.

(B) Petitioner was sentenced on January 6, 1986, following a

- ☒ Trial by Jury  
☐ Trial by a Judge without a Jury  
☐ Plea of Guilty  
☐ Plea of No Contest

in the Superior court for Coconino County with Judge  
Richard K. Mangum presiding.

(C) The file number of the case was 11654.

4. Petitioner is eligible for relief because of:

- ☐ The introduction at trial of evidence obtained pursuant to an unlawful arrest.
- ☒ The introduction at trial of evidence obtained by an unconstitutional search and seizure. See Attachment A.
- ☐ The introduction at trial of an identification obtained in violation of constitutional rights.
- ☐ The introduction at trial of a coerced confession.
- ☐ The introduction at trial of a statement obtained in the absence of a lawyer at a time when representation is constitutionally required.
- ☐ Any other infringement of the right against self-incrimination.
- ☒ The denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding. See Attachment A.
- ☐ The unconstitutional suppression of evidence by the state.
- ☐ The unconstitutional use by the state of perjured testimony.
- ☐ An unlawfully induced plea of guilty or no contest.
- ☐ Violation of the right not to be placed twice in jeopardy for the same offense.
- ☒ The abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including a right that was not recognized as existing at the time of the trial if retrospective application of that right is required. See Attachment A.

## PETITION FOR POST-CONVICTION RELIEF

Page 3

- XX The existence of newly-discovered material which require the court to vacate the conviction or sentence. See Attachment A.  
(specify when petitioner learned of these facts for the first time, and show how they would have affected the trial.)
- The lack of jurisdiction of the court which entered the conviction or sentence.
- The use by the state in determining sentence of a prior conviction obtained in violation of the United States or Arizona constitution.
- Sentence imposed other than in accordance with the sentencing procedures established by rule and statute.
- Being held beyond the term of sentence or after parole or probation has been unlawfully revoked.
- The failure of the judge at sentencing to advise petitioner of his right to appeal and the procedures for doing so.
- The failure of petitioner's attorney to file a timely notice of appeal after being instructed to do so.
- The obstruction by state officials of the right to appeal.
- Any other ground within the scope of Rule 32 of the Arizona Rules of Criminal Procedure (please specify). \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

5. The facts in support of the alleged error(s) upon which this petition is based are contained in Attachment A. (State facts clearly and fully; citations or discussions of authorities need not be included.)

6. Supporting Exhibits:

(A) The following exhibits are attached in support of the petition:

- ☐ Affidavits (Exhibit(s) # \_\_\_\_\_)
- ☐ Records (Exhibit(s) # \_\_\_\_\_)
- ☐ Other supporting evidence (Exhibit(s) # \_\_\_\_\_)

(B) No affidavits, records or other supporting evidence are attached because  
Issues to be decided are matters of law found in the state

Constitution, state statutes, case law, and at common law.

\_\_\_\_\_

## PETITION FOR POST-CONVICTION RELIEF

Page 4

7. Petitioner has taken the following actions to secure relief from his conviction or sentences:

(A) Direct Appeal: ☒ Yes ( ) No (If yes, name the courts to which appeals were taken, date number and result.) Arizona Supreme Court,  
No. CR-86-0006, March 19, 1987, Affirmed.

(B) Previous Rule 32 Proceedings: ( ) Yes ☒ No (If yes, name the court in which such petitions were filed, dates, numbers and results, including all appeals from decisions on such petitions.) \_\_\_\_\_

(C) Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona: ( ) Yes ☒ No (If yes, name the courts in which such petitions were filed, dates, numbers and results, including all appeals from decisions on such petitions.) \_\_\_\_\_

(D) Habeas Corpus or Other Petitions in Federal Courts: ( ) Yes ☒ No (If yes, name the districts in which petitions were filed, dates, court numbers - civil action or miscellaneous, and results, including all appeals from decisions on such petitions.) \_\_\_\_\_

8. Petitioner was represented by the following lawyers at (place name of counsel in the blanks and their addresses if known):

Arraignment and plea Kaign Christy, 120 Soldier Pass, Sedona, AZ 86336

Trial Kaign Christy, Bruce Griffen, 904 N. Navajo, Page, AZ 86040

Sentencing hearing Kaign Christy and Bruce Griffen

Appeal (if any) John Ellsworth, 121 E. Birch, Ste. 411, Flagstaff,

Preparation, presentation, or consideration of any previous petitions or motions for post-conviction relief filed in connection with this conviction. AZ 86002

## PETITION FOR POST-CONVICTION RELIEF

Page 5

9. The issues which are raised in this petition have not been finally decided nor raised before because: (State facts) Before the ruling by Tucson Justice of the Peace Robert B. Donfeld, no person learned in the law had ever challenged the jurisdiction of state universities' police power. (\*law enforcement authority)
10. Because of the foregoing reasons, the relief which the petitioner desires is:
- (A) ☒ Release from custody and discharge
- (B) ☒ A new trial
- (C) ☐ Correction of sentence
- (D) ☐ The right to file a delayed appeal
- (E) ☐ Other relief (specify): \_\_\_\_\_

11. Petitioner is presently represented by counsel. ☐ Yes ☒ No (If yes, his name and address.) \_\_\_\_\_

If no, does the petitioner request the court to appoint counsel to represent him in this proceeding? ☒ Yes ☐ No

I swear or affirm that this petition includes all the claims and grounds for post-conviction relief that are known to me, that I understand that no further petitions concerning this conviction may be filed on any ground of which I am aware but do not raise at this time, and that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

Clarence G. D. Dixon  
Petitioner

Subscribed and sworn to before me on 25 July, 1991

Richard S. [Signature]  
Notary Public

My Commission Expires March 18, 1994

My Commission Expires \_\_\_\_\_



Attachment A

Page 1 of 4

4. Petitioner is eligible for relief because of the introduction at trial of evidence obtained by an unconstitutional search and seizure.

On June 10, 1985, Northern Arizona University police officers seized two pairs running shoes PT 97, 158; two photographs PT 108, 120; an Arizona Driver's License PT 153; seven knives PT 216 (search warrant); an envelope PT 216 (search warrant); two photographs PT 216 (search warrant); glasses PT 163; and clothing and rope kit PT 158; all of which were later introduced at trial. On June 11, 1985, Northern Arizona University police officers seized physical evidence (court order) PT 169, 318; which were later analyzed and introduced at trial PT 332. On June 13, 1985, Northern Arizona University police officers seized a blood sample PT 160; which was later analyzed and introduced at trial PT 332.

On or about mid-June 1991, Tucson Justice of the Peace Robert B. Donfeld, ruled University of Arizona police under jurisdiction and control of Arizona Board of Regents, A.R.S. § 15-1625, had no authority to act. The Arizona Board of Regents having jurisdiction and control of Northern Arizona University, therefore, the Northern Arizona University police were and are also without authority or ultra vires. All evidence seized, with or without warrant or court order, and introduced at trial, lacked fundamental legal foundation; A.R.S. Const. Art. 2, § 1 and Art. 2, § 4, and were, therefore, unlawfully processed and should have been excluded. The exclusion of this multitude of evidence would have severely

Argument A (cont)

Page 2 of 4

hindered the state's case.

4. Petitioner is eligible for relief because of the denial of the constitutional right to representation by a competent lawyer at every critical stage of the proceeding.

Defense counsel, Kevin Christy and Bruce Griffen, by failing to question the validity and authority of the Northern Arizona University Police Department and its jurisdictional limitations and powers, denied petitioner effective assistance of counsel.

In a DUI case heard by Tucson Justice of the Peace Robert F. Donfeld, defense counsel Lola Tainey did question the jurisdiction and authority of a law enforcement entity under the control and jurisdiction of the Arizona Board of Regents. Judge Donfeld, having heard arguments from both state and defense counsel, ruled in favor of the defense.

If petitioner's defense counsel had challenged the jurisdiction and authority of the Northern Arizona University Police Department to act, and had successfully won, as in the DUI case mentioned above, hours of testimony and many seized items of evidence would have been excluded from petitioner's trial, thereby substantially changing the entire face of the trial.

4. Petitioner is eligible for relief because of the abridgement of any other right guaranteed by the constitution or the laws of this state, or the constitution of the United States, including a right that was not recognized as existing at the time of the trial if retrospective application of that right is required.

The Arizona Board of Regents through Northern Arizona

Attachment A (cont)

Page 3 of 4

University violated petitioner's right to procedural due process of law and equal protection by acting without lawful authority in creating a police force that exercised powers upon petitioner, powers it did not have through statute or the constitution.

4. Petitioner is eligible for relief because of the existence of newly-discovered material which requires the court to vacate the conviction or sentence.

On July 2, 1991, it was reported on KUAZ-TV, Arizona Illustrated, by Peggy Giddings, that in mid-June, Robert P. Donfield, Tucson Justice of the Peace, in a DUI case involving the University of Arizona Police Department, ruled that the university police had no authority to issue citations. The Arizona Board of Regents has jurisdiction and control over the universities, ARS § 15-1625, and Northern Arizona University would logically come under the same ruling. Ms. Giddings stated on the television program that the U. of A. police may not, "have the right to exist."

5. The facts in support of the alleged error(s) upon which this petition is based are contained in Attachment A.

Northern Arizona University Police Department officers John Polson and Homer Weintzelman testified at length in petitioner's trial PT 146-202 and PT 205-222. Officer Polson as primary investigating officer PT 148, 171, 174; handled evidence admitted at trial PT 152, 158, 162, 184, 201; created photographic evidence admitted at trial PT 153; documented evidence used at trial PT 156; gathered forensic evidence

Attachment 4 (cont)

Page 4 of 6

used at trial PT 160; and procured a court order to obtain physical evidence PT 168, 182, 202; all without proper authority of law.

Officer Weintzelman conducted a felony investigation PT 206, 217; assisted in an unlawful search of a residence (search warrant) PT 209; acted as custodian of evidence PT 210, 215; and documented evidence used at trial PT 211; all without proper authority of law.

Lieutenant Juarez, Sergeant Musselman, and Officer Fennel, Northern Arizona University Police Department personnel, were substantially involved in investigating petitioner's case PT 209; all without lawful authority.

No where within the Arizona Revised Statutes 15-1625 et. seq., is it expressly stated that the Arizona Board of Regents has the authority or is given the authority to create, maintain or operate a law enforcement entity.

Petitioner believes a right that is constitutionally granted such as due process, equal protection, effective assistance of counsel and other colorable claims as may be found, cannot be taken away or rendered nugatory by a failure of the state legislature to act in providing express law enforcement powers and authority upon the Arizona Board of Regents and its universities. C.J.S. Constitutional Law, § 60.

Petitioner prays relief is granted in the form of a new trial or release from custody and discharge.

# Appendix D

MICHAEL JEANES, CLERK  
DEP  
77.7  
FILED

2006 MAY -1 PM 4:04



CLARENCE WAYNE DIXON

A896911-TOWERS JAIL

3127 W. GIBSON LANE

PHOENIX, AZ 85004

IN PROPERA PERSONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

PLAINTIFF,

VS.

CLARENCE WAYNE DIXON,

DEFENDANT,

NO. CR 2002-019595

MOTION TO SUPPRESS THE

DNA EVIDENCE

(EVIDENTIARY HEARING/ORAL

ARGUMENT REQUESTED)

(ASSIGNED TO THE HONORABLE

ANDREW G. KLEIN)

DEFENDANT CLARENCE DIXON, PRO PER, MOVES THE COURT

TO SUPPRESS ALL DNA EVIDENCE PRIOR, ARISING, AND SUBE-

SEQUENT TO THE INDICTMENT OF NOVEMBER 26, 2000. THIS

MOTION IS SUPPORTED BY THE FIFTH, SIXTH, EIGHTH, AND

FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION,

ARTICLE 2, SECTION 4, 15 AND 24 OF THE ARIZONA CONSTITUTION

AND THE ARIZONA RULES OF CRIMINAL PROCEDURE, CRIM. RULE

16.2.b.

IF THE COURT DENIES THIS MOTION AND/OR HEARING, THEN HE ASKS THE COURT FOR SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF SUCH DENIAL. IN THAT CIRCUMSTANCE, HE ALSO REQUEST A STAY IN THE PROCEEDINGS TO ALLOW A SPECIAL ACTION TO BE TAKEN TO A HIGHER COURT.

ATTACHED IS DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES WITH EXHIBITS IN SUPPORT OF THIS MOTION.

DATED THIS 28 TH DAY OF APRIL, 2006.

BY Clarence W. Dixon

CLARENCE W. DIXON,

DEFENDANT PRO PER

#### MEMORANDUM OF POINTS AND AUTHORITIES WITH EXHIBITS

##### I. FACTS AND PROCEDURAL HISTORY

IN LATE 1985, DEFENDANT DIXON (DIXON) RECEIVED SEVEN CONSECUTIVE LIFE SENTENCES FOR THE KIDNAPPING AND SEXUAL ASSAULT OF A NORTHERN ARIZONA UNIVERSITY (NAU) COED. STATE V. DIXON, 151 ARIZ. 153, 735 P.2D 761 (1987).

DIXON ALLEGES HE WAS UNLAWFULLY CONVICTED THROUGH AND BY NAU SECURITY PERSONNEL UNDER COLOR OF LAW WITHOUT STATUTORY AUTHORITY. BECAUSE THIS 1985 CONVICTION WAS UNLAWFUL, DNA EVIDENCE OBTAINED UNDER THE CONVICTION AND INCARCERATION SHOULD BE SUPPRESSED UNDER FRUIT OF THE POISONOUS TREE AND/OR UNDETERMINED FUNDAMENTAL ERROR DOCTRINES.

(2)

ON JUNE 10, 1985, DIXON WAS ARRESTED AS A SUSPECT IN THE SEXUAL ASSAULT OF A NAV COED. NAV POLICE, IN THE WEEKS FOLLOWING, INVESTIGATED. DIXON WAS FOUND GUILTY BY JURY AND SENTENCED TO LIFE IMPRISONMENT. STATE V. DIXON, 151 ARIZ. 153, 735 P.2D 761 (1987).

ON JULY 31, 1991, DIXON FILED HIS FIRST CRIM. RULE 32 PETITION AFTER HEARING OF A D.U.I. SUSPECT'S CHALLENGE TO UNIVERSITY OF ARIZONA POLICE AUTHORITY. THE HONORABLE ROBERT DONFELD, JUSTICE COURT, FOUND THE UNIVERSITY POLICE LACKING STATUTORY AUTHORITY. THE STATE APPEALED. THE SUPERIOR COURT REVERSED AND THE DEFENDANT APPEALED. IN GOODE V. ALFRED, 171 ARIZ. 94, 828 P.2D 1235 (APP. 1991), THE APPELLATE COURT FOUND THE 1985 STATUTES DID GRANT THE STATE BOARD OF REGENTS IMPLIED AUTHORITY TO ESTABLISH AND MAINTAIN A POLICE FORCE. GOODE V. ALFRED, 171 ARIZ. 94, 96, 828 P.2D 1235, 1237.

THE HONORABLE RICHARD K. MANGUM, RET., RULED THAT GOODE V. ALFRED, SUPRA, APPLIED TO DIXON'S CLAIM ALTHOUGH PUBLIC DEFENDER LINDA M. HOULE INFORMED THE COURT OF THE APPLICABILITY OF STATUTES EFFECTIVE IN 1981. MS. HOULE'S TIMELY MOTION FOR REHEARING WAS DENIED ON JANUARY 13, 1992, COCONINO COUNTY SUPERIOR COURT, CR 85-11654. DIXON'S PETITION FOR REVIEW WAS GRANTED BUT DENIED RELIEF ON DECEMBER 3, 1992, COURT OF APPEALS, 1 CA-CR 92-0171 PR. DIXON'S PETITION FOR REVIEW BY SUPREME COURT WAS DENIED WITHOUT COMMENT OR DISCUSSION ON AUGUST 31, 1993, ARIZONA SUPREME COURT,



CR 93-0198 PR. DIXON CONTINUED IN THE STATE COURTS WITH A HABEAS CORPUS PETITION IN THE SUPREME COURT DISMISSED APRIL 5, 1993, ARIZONA SUPREME COURT, MC 93-0226; A HABEAS CORPUS PETITION IN PINAL COUNTY TRANSFERRED TO COCONINO COUNTY AS A SECOND CRIM. RULE 32 PETITION DENIED ON AUGUST 4, 1995; A PETITION FOR REVIEW FROM SUPERIOR COURT DENIED ON JULY 11, 1996, COURT OF APPEALS, CA-CR 95-0831 PR; A PETITION FOR REVIEW BY SUPREME COURT DENIED ON DECEMBER 9, 1996, ARIZONA SUPREME COURT, CR 96-0447 PR; A SPECIAL ACTION PETITION WAS DISMISSED BY THE SUPREME COURT ON JULY 8, 1994, ARIZONA SUPREME COURT, M 94-0004, PINAL COUNTY CV 94-041739; A THIRD CRIM. RULE 32 DENIED ON FEBRUARY 7, 2002; A PETITION FOR REVIEW FROM SUPERIOR COURT DENIED IN COURT OF APPEALS, 1CA-CR 02-0203 PR; AND A PETITION FOR REVIEW IN THE SUPREME COURT DENIED ON APRIL 17, 2003, ARIZONA SUPREME COURT, CR 03-0076 PR.

IN ALL DIXON'S MANY PLEADINGS, HE HAS BROUGHT FORTH THE CLAIM THAT NAU POLICE LACKED SUFFICIENT STATUTORY AUTHORITY OR JURISDICTION TO CONDUCT CRIMINAL FELONY INVESTIGATIONS ON JUNE 10 1985 TO AUGUST 7, 1985.

## II. LAW AND ARGUMENT

DEFENDANT DIXON WAS CONVICTED UNLAWFULLY THROUGH THE ADMITTANCE OF EVIDENCE AND TESTIMONY GATHERED BY NORTHERN ARIZONA UNIVERSITY SECURITY PERSONNEL. THESE OFFICERS WERE LIMITED IN THEIR POWERS BY A.R.S. 15-1627 (1981). EXHIBIT "A", PARAGRAPHS F AND G ARE OF

PARTICULAR NOTE. ADDITIONALLY, A.R.S. 1-215(23) (1981) DOES NOT INCLUDE THE UNIVERSITIES' POLICE IN ITS DEFINITION OF WHO IS A PEACE OFFICER, EXHIBIT "B".

THE USE OF UNLAWFULLY OBTAINED EVIDENCE AT TRIAL IS IMPERMISSIBLE AND FUNDAMENTAL ERROR THROUGH THE DOCTRINE OF THE EXCLUSIONARY RULE. WONG SUN V. UNITED STATES, 83 S. CT. 407, 371 U.S. 471 (1963). BECAUSE THE STATE IS NOW USING DNA COMPARISON EVIDENCE OBTAINED FROM DIXON IN 1995 WHILE ILLEGALLY INCARCERATED, IT TOO MUST BE SUPPRESSED AS "FRUIT OF THE POISONOUS TREE" SIMPLY BECAUSE IT WOULD NOT HAVE COME TO LIGHT BUT FOR THE ILLEGAL ACTIONS OF THE POLICE. "WONG SUN V. UNITED STATES, 83 S. CT. 407, 417, 371 U.S. 471, 488 (1963); DAVIS V. MISSISSIPPI, 89 S. CT. 1394, 1396, 399 U.S. 721, 724 (1969) (DEFENDANT CONVICTED OF RAPE SOUGHT EXCLUSIONARY RULE PROTECTION; REVERSED); UNITED STATES V. SANTA MARIA, 15 F.3D 879, 880 (9TH CIR. 1994) (FEDERAL LAW AUTHORIZING AGENTS TO SEARCH FOR ALIENS CONFERS NO AUTHORITY TO SEARCH FOR DRUGS; REVERSED); AND STATE V LLOYD, 126 ARIZ. 368, 365, 616 P.2D 39, 40 (1980) (DEFENDANT CONVICTED OF FIRST DEGREE MURDER AND ARMED ROBBERY SOUGHT EXCLUSIONARY RULE PROTECTION; AFFIRMED).

IN 1981, A.R.S. 1-215(23) WHICH DEFINES WHO IS A PEACE OFFICER, ADDED "AND COMMISSIONED PERSONNEL OF THE DEPARTMENT OF PUBLIC SAFETY." (ADDED BY LAWS CH. 28, SECT. 1, EFFECTIVE JULY 25, 1981) EXHIBIT "B".

IN 1985, A.R.S. 1-215(23) WAS FURTHER AMENDED ADDING, "POLICE OFFICERS APPOINTED BY THE ARIZONA BOARD OF REGENTS

WHO HAVE RECEIVED A CERTIFICATE FROM THE ARIZONA LAW ENFORCEMENT OFFICERS ADVISORY COUNCIL," WHICH BECAME EFFECTIVE AUGUST 7, 1985. (EMPHASIS ADDED).

IN 1981, A.R.S. 15-1627 GRANTED THE BOARD OF REGENTS THE AUTHORITY TO ADOPT RULES SIMILAR TO THE ARIZONA MOTOR VEHICLE CODE, SANCTIONS, AND POWERS OF SECURITY OFFICERS. PARAGRAPHS F OF THIS STATUTE LIMITS THE AUTHORITY OF THE SECURITY OFFICERS AND PARAGRAPH G ADDITIONALLY LIMITS THEIR AUTHORITY. A.R.S. 15-1627 (1981) (ADDED BY LAWS 1981 CH.1, SECT. 2 EFFECTIVE JANUARY 23, 1981). EXHIBIT "A".

THESE PRE-AUGUST 7, 1985 STATUTES WERE MADE KNOWN TO JUDGE MANGUM BY CLAUDIA M. HOWLE IN THE AMENDED CRIM. RULE 32 PETITION AND THE MOTION FOR REHEARING BOTH FILED IN LATE 1991. JUDGE MANGUM DID NOT ACKNOWLEDGE OR APPLY THESE STATUTES BUT CITED GOODE V. ALFRED, 171 ARIZ. 94, 828 P.2D 1235 (APP. 1991) TO DENY DIXON RELIEF. THESE SUBSTANTIAL STATUTORY CHANGES WERE ALSO ASSERTED IN ALL OF DIXON'S MANY PLEADINGS. E.G., MOTION FOR REHEARING, CR: 85-11659, OCTOBER 24, 1991. EXHIBIT "B".

GOODE V. ALFRED, SUPRA, IS GOOD LAW FROM AUGUST 7, 1985 TO THE PRESENT. THE GOODE COURT CITED A.R.S. 1-215(23), BY AMENDMENT IN 1985, AS SUPPORT THAT THE BOARD OF REGENTS HAD IMPLIED AUTHORITY TO ESTABLISH A POLICE FORCE. BUT A CURSORY RESEARCH OF THIS STATUTE HAS IT READING ENTIRELY DIFFERENT FROM THE GOODE COURT'S INTERPRETATION BEFORE AUGUST 7, 1985. ADDITIONALLY, GOODE DOES NOT INCLUDE OR DISCUSS OR APPLY A.R.S. 15-1627 IN ANY WAY, SHAPE OR FORM WHEN THE STATUTE

ADDRESSED THE POWERS OF THE UNIVERSITIES' SECURITY OFFICERS (OF COURSE, IT WAS AMENDED BY THEN). AT THE TIME OF DIXON'S ARREST AND SUBSEQUENT FELONY INVESTIGATION BY NAU POLICE UP TO AUGUST 7, 1985 WHEN THE UNIVERSITY POLICE WERE NOT INCLUDED IN THE DEFINITION OF WHO IS A PEACE OFFICER BY A.R.S. 1-215(23)(1981) AND THESE SAME OFFICERS WERE DEFINITELY LIMITED AS TO THEIR AUTHORITY UNDER A.R.S. 15-1627(1981), IT DEFIES NOT ONLY TRADITIONAL PRINCIPLES OF STATUTORY CONSTRUCTION AND APPLICATION BUT LONG AS WELL TO ALLOW GODDE V. ALFRED, SUPRA, TO STAND AS A FINAL ADJUDICATIVE REASONING TO DENY DIXON RELIEF NOW AND IN 1991 AND 1992.

THE UNITED STATES SUPREME COURT HAS ADOPTED A 'LOOK THROUGH' RULE THAT LOOKS TO THE LAST EXPLAINED DECISION TO DETERMINE WHETHER A HABEAS CORPUS PETITIONER HAS LITIGATED HIS CLAIM ON THE MERITS IN STATE COURT. YEST V. NUNNEMAKER, 501 U.S. 797, 111 S.Ct. 2590, 2594-95, 115 L.Ed.2d 706 (1991); COLLEMAN V. THOMPSON, 501 U.S. 772, 111 S.Ct. 2546, 2551, 115 L.Ed.2d 640 (1991); AND STATE V. WHIPPLE, 177 ARIZ. 272, 273-74, 866 P.2D 1358, 1359-60 (APP. 1993). THE ARIZONA COURT OF APPEALS MEMORANDUM DECISION IS THE LAST EXPLAINED DECISION. EXHIBIT "J," DIXON CITES YEST ONLY AS GUIDANCE SINCE HE IS NEITHER HABEAS CORPUS OR CRIM. RULE 32 PETITIONER BUT CAPITAL MURDER DEFENDANT SEEKING RECOURSE IN UNKNOWN LEGAL TERRAIN.

THE COURT OF APPEALS MEMO DECISION STATES THAT THE NAU POLICE DEPARTMENT "PARTICIPATED IN THE INVESTIGATION." THE NAU POLICE OBTAINED AND EXECUTED TWO SEARCH WARRANTS AND ONE COURT ORDER,



REPORTER'S TRANSCRIPT (RT), DEC. 18, 1985, PAGES 169, 179, 182, 209;  
OBTAINED PHYSICAL EVIDENCE AND INTERVIEWED WITNESSES AND THE  
VICTIM, RT DEC. 17, 1985, PAGES 169, 174-75; COMMANDED A CRIME SCENE  
SEARCH TEAM, RT DEC. 17, 1985, PAGE 175; ONE OFFICER AS PRIMARY  
INVESTIGATOR, RT DEC. 17, 1985, PAGE 174; AND TWO OFFICERS TESTIFIED  
AT TRIAL, RT DEC. 17-18, 1985, PAGES 146, 205. DIXON ARGUES THESE  
OFFICERS MORE THAN PARTICIPATED BUT WERE THE PRIMARY AND LEAD  
INVESTIGATORS.

DIXON ALLEGES THAT BECAUSE THESE OFFICERS WERE  
INSTRUMENTAL IN THE INVESTIGATION FROM JUNE 10, 1985 TO AUGUST 7,  
1985, WITHOUT STATUTORY AUTHORITY, IT CAUSED HIS DECEMBER 1985  
TRIAL TO BE FUNDAMENTALLY FLAWED.

DIXON FURTHER ARGUES THE TRIAL COURT BY INTRODUCTION  
OF EVIDENCE UNLAWFULLY OBTAINED BY NAU OFFICERS LOST  
JURISDICTION BY THE ~~SHOWN~~ EXTENT OF THEIR NON-STATUTORY  
ALLOWED PARTICIPATION. A "JUDICIAL TRIBUNAL EXCEEDS ITS  
JURISDICTION WHEN IT ACTS BEYOND THE POWER GRANTED IT BY  
CONSTITUTION, STATUTE OR RULE OF COURT WHICH APPLY UNDER  
THE DOCTRINE OF STARE DECISIS." PAZOS V. SUPERIOR COURT  
IN AND FOR PIMA COUNTY, 8 ARIZ. APP. 560, 561, 448 P.2D 130, 131  
(1969).

BY FAILING TO CONSIDER AND INTERPRET THE APPLICABLE  
STATUTES, A.R.S. 1-215(23) (1981) AND A.R.S. 15-1627 (1981),  
THE TRIAL COURT AND 1992 COURT OF APPEALS EXCEEDED THEIR  
JURISDICTION AS AN ABUSE OF DISCRETION. PAZOS V. SUPERIOR  
COURT IN AND FOR PIMA COUNTY, SUPRA, AND STATE V. CHAPPLE,

135 A.P.2d 281, 286, 660 P.2d 1208, 1222 (1983) ISSUES OF JURISDICTION CAN BE BROUGHT AT ANY TIME, MAHMOUD V. STATE, 138 A.P.2d 528, 530, 675 P.2d 1347, 1349 (APP. 1983), AND THIS ISSUE SHOULD BE CONSIDERED DE NOVO.

DIXON ARGUES THAT HIS 1991 CRIM. RULE 32 CLAIM WAS NEVER FULLY AND CORRECTLY ADJUDICATED BECAUSE THE DECISION TO APPLY GOODE V. ALFRED, SUPRA, TO DENY DIXON RELIEF BOTH BY THE TRIAL COURT AND COURT OF APPEALS WAS NOT 'ON THE MERITS' AS STATED AND REQUIRED IN CRIM. RULE 32.2(a)(2) WHICH READS IN PART, "A DEFENDANT SHALL BE PRECLUDED FROM RELIEF UNDER THIS RULE BASED UPON ANY GROUND: (2) FINALLY ADJUDICATED ON THE MERITS ON APPEAL OR IN ANY PREVIOUS COLLATERAL PROCEEDINGS." (EMPHASIS ADDED), CRIM. RULE 32.2(a)(2), THE APPLICATION OF GOODE WAS NOT ON THE MERITS.

DIXON FURTHER ARGUES HIS CHALLENGE IN THIS COURT TO THE 1985 CONVICTIONS AND INCARCERATION IN STATE V. DIXON, SUPRA, IS AN ALLOWABLE DEFENSE. SEE RULES OF CRIMINAL PROCEDURE, OMNIBUS HEARING FORM 16, AT I, B, BOX 2, AMENDED AND EFFECTIVE AUGUST 1, 1975. ONE ALLOWABLE DEFENSE IN BOX 2 IS 'INVALIDITY OF PRIOR CONVICTION' AND DIXON ALLEGES THAT HIS 1985 CONVICTIONS ARE INVALID AND THE DNA COMPARISON 'HIT' WHILE UNDER THOSE INVALID CONVICTIONS LOGICALLY OUGHT TO BE SUPPRESSED AS A MATTER OF LAW.

IT CANNOT BE DISPUTED THAT ON JUNE 10, 1985 TO AUGUST 6, 1985, CERTAIN 1981 STATUTES SHOULD HAVE BEEN

(9)

IN EFFECT, AND THUS, INTERPRETED IN AT LEAST A FAIR AND  
IMPARTIAL MANNER. UNDER THE RULE OF LAW AND AMONG  
MEN AND WOMEN OF REASON, THERE IS A CLEAR AND HIGH  
PROBABILITY THAT DIXON WAS AND IS ILLEGALLY CONVICTED  
AND AS SUCH, THE DNA COMPARISON SAMPLES HE SURRENDERED  
IN 1998 WERE AND ARE TAINTED AND MUST BE SUPPRESSED  
AS FRUIT GATHERED FROM THE POISONOUS TREE.

RESPECTFULLY SUBMITTED THIS 28 TH DAY OF APRIL, 2006,

BY Clarence W. Dixon

CLARENCE W. DIXON,

DEFENDANT PRO PER

COPY OF THE FOREGOING MAILED

DELIVERED THIS 28 TH DAY OF

APRIL, 2006, TO:

THE HONORABLE ANDREW G. KLEIN

JUDGE OF THE SUPERIOR COURT

JUAN MARTINEZ,

DEPUTY COUNTY ATTORNEY

BY Clarence W. Dixon

MARICOPA COUNTY SHERIFF'S OFFICE  
JOSEPH M. ARPAIO, SHERIFF

CERTIFICATION

MAY 01 2006

I hereby certify that on this date \_\_\_\_\_,

I filed the attached original with the Clerk of the Superior Court, Maricopa County, State of Arizona.

I further certify that copies of the original have been forwarded to:

✓ Judge/Comm. Klein Superior Court, Maricopa County,  
State of Arizona.

✓ County Attorney, Maricopa County, State of Arizona. J Martinez

\_\_\_\_ Public Defender, Maricopa County, State of Arizona. \_\_\_\_\_

\_\_\_\_ Attorney \_\_\_\_\_

\_\_\_\_ Probation Officer \_\_\_\_\_  
Adult Probation Department, Maricopa County, State of Arizona.

\_\_\_\_ Legal Defender \_\_\_\_\_

\_\_\_\_ Legal Advocate \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

C Keller

INMATE LEGAL SERVICES  
Maricopa County, Sheriff's Office  
201 S. 4<sup>th</sup> Avenue  
Phoenix, AZ 85003



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	}	NO. CR 2002-019595
PLAINTIFF,	}	
VS.	}	UNSWORN DECLARATION
CLARENCE WAYNE DIXON,	}	
DEFENDANT,	}	

I, CLARENCE WAYNE DIXON, DEFENDANT IN THE ABOVE  
ENTITLED CAUSE, SAYS:

1) THAT I HAVE DILIGENTLY SOUGHT JUDICIAL RELIEF FROM  
SEVEN FELONY CONVICTIONS SINCE JULY 31, 1991 RAISING CLAIM THAT NAU  
POLICE LACKED STATUTORY AND JURISDICTIONAL AUTHORITY.

2) THAT IN JUNE 1985, NORTHERN ARIZONA UNIVERSITY (NAU)  
POLICE FULLY PARTICIPATED IN THE INVESTIGATION OF THE SEXUAL  
ASSAULT OF NAU COED ANDREA OPPER NEE SALAZAR.

3) THAT NAU POLICE OFFICER JOHN BOLSON WAS PRIMARY  
INVESTIGATOR, HANDLED EVIDENCE ADMITTED AT TRIAL, DOCUMENTED  
EVIDENCE USED AT TRIAL, GATHERED FORENSIC EVIDENCE USED  
AT TRIAL AND PROCESSED A COURT ORDER TO OBTAIN EVIDENCE.

4) THAT NAU POLICE OFFICER HOMER HEINTZELMAN ASSISTED  
IN THE SEARCH OF DIXON'S RESIDENCE WITH SEARCH WARRANT  
AUTHORITY, ACTED AS CUSTODIAN OF EVIDENCE AND DOCUMENTED  
EVIDENCE USED AT TRIAL.

5) THAT NAV POLICE LIEUTENANT JUAREZ, SARGEANT  
MUSSELMAN AND OFFICER TENNEL WERE ALSO SUBSTANTIALLY  
INVOLVED IN THE INVESTIGATION OF THIS JUNE 12, 1985 ASSAULT.

I DECLARE UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS TRUE AND CORRECT:

EXECUTED ON APRIL 27, 2006 BY CLARENCE W. DIXON  
CLARENCE W. DIXON  
DEFENDANT PRO TER  
A896911 - TOWERS JAIL  
3127 W. GIBSON LANE  
PHOENIX, AZ 85009

EXHIBIT "A"

# SITIES, RELATED INSTITUTIONS Ch. 13

and hearing department would provide hearing test services to district, but parties would have to be acting jointly to exercise powers common to the parties to a contract to qualify as an intergovernmental agreement. Op. Atty. Gen. No. 183-057.

ehicles on property of institutions un-  
ction of board; sanctions; powers of  
ficers

gents shall have authority to adopt  
ontrol of vehicles on property of the in-  
with respect to the following only:  
ection of travel, authorized hours of  
place of parking, method of parking,  
as and designation of special parking  
if and the general public. The board  
e and collect reasonable fees for spe-  
The board shall cause signs and no-  
perty for the regulation of vehicles.

regulations adopted by the Arizona  
ubsection A shall be enforced admin-  
proved by the Arizona board of re-  
its jurisdiction. As to students, fac-  
s may, but need not, involve both stu-  
odies, so long as all procedures give  
portunity to be heard concerning the  
ction to be imposed upon him as a re-  
Administrative and disciplinary sanc-  
ents, faculty and staff for unauthor-  
t limited to: a reasonable monetary  
iscipline, withdrawal or suspension of  
cumbrances of records or grades, or  
nand. Habitual or flagrant disregard  
a ground for suspension or expulsion  
ent and may be taken into considera-  
egard to amount of salary and contin-

public who park their vehicles in an  
property of an institution under the  
rd of regents shall be warned concern-  
and, if they continue, or if such per-  
598

## ARIZONA BOARD OF REGENTS Ch. 13

§ 15-1628

sons habitually park in such an unauthorized manner, the vehicles so parked may be impounded by the institution and a reasonable fee ex-acted for the cost of impoundment and storage, if any, prior to the release of the vehicles to their owners or their duly authorized repre-sentatives.

D. Any person who has received a final administrative ruling concerning a sanction imposed upon him as a result of unauthorized parking shall have the right to have that ruling reviewed by the supe-rior court of the county in which the institution involved is situated, in accordance with the provisions of the administrative review act, ti-tle 12, chapter 7, article 6.<sup>1</sup>

E. This section shall be considered supplemental in nature to the general common law and statutory powers of institutions unde-control of the board as to the internal control and activities of their students, faculty and staff.

F. The security officers of each of the institutions shall have the authority and power of peace officers for the protection of property under the jurisdiction of the board, the prevention of trespass, the maintenance of peace and order, only insofar as may be prescribed by law, and in enforcing the regulations respecting vehicles upon the property.

G. The designation as "peace officer" shall be deemed to be a peace officer only for the purpose of this section.

Added by Laws 1981, Ch. 1, § 2, eff. Jan. 23, 1981.

<sup>1</sup> Section 12-901 et seq.

### Historical Note

#### Source:

Laws 1967, Ch. 101, § 1.  
A.R.S. former § 15-725.01.  
Laws 1968, Ch. 88, § 1.

### Library References

Colleges and Universities § 6(5).

O.J.S. Colleges and Universities § 14.

## § 15-1628. Powers and procedures pertaining to optional re- tirement programs

A. The Arizona board of regents may establish optional retirement programs under which contracts providing retirement and death benefits may be purchased for members of the faculty and admin-istrative officers of the institutions under its jurisdiction. The bene-fits to be provided for or on behalf of participants in the optional retirement program shall be provided through annuity contracts,

EXHIBIT "B"

## b LEGISLATURE

FIRST REGULAR SESSION—1981

A. 28

FLIGHT OPERATIONS OR  
REMOVAL OF REGULATION

## CHAPTER 27

## STATE BILL 1039

providing for the removal of the re-  
by the aeronautics division of commercial  
ing clubs; making statutory conforming  
28-1749 and title 28, chapter 12, article 6,  
and amending section 40-205, Arizona Re-

f the State of Arizona:

apter 12, article 6, Arizona Revised Statutes, are

Revised Statutes, is amended to read:

mercial flight operators by commission pro-

provision of law to the contrary notwithstanding,  
ave no power or authority to may not regulate  
mercial flight operators, as defined in § 28-1749.

means the carrying of persons or goods for hire,  
instruction for compensation.

means a person who conducts commercial flight

27, 1981.

etary of State, March 27, 1981.

PUBLIC SAFETY DEPARTMENT  
ONED PERSONNEL

## CHAPTER 28

## STATE BILL 1043

visions; prescribing definition of "peace  
epartment of public safety personnel, and  
izona Revised Statutes.

f the State of Arizona:

Revised Statutes, is amended to read:

state, unless the context otherwise requires:

additions in text are indicated by underline:

1. "Action" includes any matter, or proceeding in a court, civil or criminal.
2. "Adult" means a person who has attained the age of eighteen years.
3. "Bribe" signifies anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in his action, vote or opinion, in any public or official capacity.
4. "Child" or "children" as used in reference to age of persons means persons under the age of eighteen years.
5. "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.
6. "Daytime" means the period between sunrise and sunset.
7. "Depose" includes every manner of written statement under oath or affirmation.
8. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.
9. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.
10. "Inhabitant" means a resident of a city, town, village, district, county or precinct.
11. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.
12. "Knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the statute using such word. It does not require any knowledge of the unlawfulness of the act or omission.
13. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and judges of the supreme court, judges of the superior court, justices of the peace and police magistrates in cities and towns.
14. "Majority" or "age of majority" as used in reference to age of persons means the age of eighteen years or more.
15. "Malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
16. "Mentally ill person" includes an idiot, an insane person, a lunatic or a person non compos.
17. "Minor" means a person under the age of eighteen years.
18. "Minor children" means persons under the age of eighteen years.
19. "Month" means a calendar month unless otherwise expressed.
20. "Neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.
21. "Nighttime" means the period between sunset and sunrise.
22. "Oath" includes affirmation or declaration.
23. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns and commissioned personnel of the department of public safety.
24. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

deletions by strikeouts

223



## LEGISLATURE

FIRST REGULAR SESSION--1981

30

money, goods, chattels, dogs, things in action and  
 writ of ~~habeas corpus~~ issued in the course of judicial  
 and personal property.

ive with lands, tenements and hereditaments.  
 rtified mail.

a paper issuing from a court or public office to  
 is required to be affixed, means the impression  
 asion of the seal affixed thereto by means of a

includes mark, when a person cannot write, with  
 ssed by a person who writes his own name as

ferent parts of the United States, includes the  
 the territories.

ner of oral statement under oath or affirmation.  
 District of Columbia and the territories.

e to shipping, includes ships of all kinds, steam-  
 and every structure adapted to navigation from  
 of persons or property.

st to conduct or to a circumstance described by a  
 erson is aware or believes that his or her conduct  
 stance exists.

receipt in writing issued in the name of the state

27, 1981.

ry of State, March 27, 1981.

# —PROPOSED CAPITAL LEVY AN—NOTICE

## CHAPTER 29

### ATE BILL 1076

prescribing that the governing board of a  
 e within fifteen days prior to a hearing on a  
 and amending section 15-962, Arizona  
 by Laws 1981, chapter 1, section 2.

the State of Arizona:

ona Revised Statutes, as added by Laws 1981,  
 read:

avy; items for which levy may be expended  
 lopt and may subsequently amend a capital levy  
 collected as provided in this section are to be

additions in text are indicated by underline;

expended. The capital levy plan shall not extend for a period in excess of five years,  
 and the accumulation of funds monies shall not exceed a five year period. Funds  
Monies collected as provided in this section shall be expended only in accordance with  
 the following:

1. A capital levy plan shall follow a standard format as prescribed in the uniform  
 system of financial records.

2. A capital levy plan shall be adopted or amended at a public hearing on the  
 proposed plan and the governing board shall publish notice in a newspaper of general  
 circulation within the school district within ten fifteen days prior to the hearing.

3. If the governing board adopts or amends a capital levy plan after January 1,  
 1980 that includes the construction of school buildings or the purchase of school sites,  
 the portion of the plan that includes the construction of school buildings or purchase  
 of school sites shall not be implemented until that portion of the plan is approved by a  
 majority of the qualified electors voting in an election called for such purpose. The  
 election shall be conducted and the notice and ballots shall be prepared as provided in  
 § 15-481.

B. Subsequent to the adoption of a capital levy plan, and at the request of the  
 governing board of a school district, the county school superintendent shall include in  
 his estimate to the board of supervisors the items prescribed by this section and the  
 board of supervisors may make a levy on the property of the school district sufficient  
 to produce the amount asked for, but a levy for such purpose shall not exceed thirty  
 cents on each one hundred dollars of property valuation for a common school district  
 or a high school district and sixty cents for each one hundred dollars of property  
 valuation for each unified school district organized pursuant to § 15-448. Funds  
Monies collected pursuant to the levy may be accumulated for a period of five years  
 and, if not needed to be used for a period of ten days or more, may be invested in the  
 same manner as debt service fund monies as prescribed by § 15-1025.

C. The governing board shall include in its annual budget the following items  
 which may be paid from the capital levy revenues prescribed by this section:

1. The purchase or lease of sites, improvement of school grounds, erecting,  
 purchasing, leasing, improving and furnishing of school buildings and appurtenances.

2. The improving and furnishing of buildings used for school purposes when such  
 buildings are leased from the national park service.

3. The purchase, lease-purchase or lease of pupil and nonpupil vehicles and  
 transportation equipment, portable classrooms or specialized electronic, audiovisual  
 and computer equipment.

Approved by the Governor, March 27, 1981.

Filed in the Office of the Secretary of State, March 27, 1981.

## STATE AGENCY ADMINISTRATIVE RULES AND REGULATIONS—PUBLICATION; ADOPTION; AMENDMENT; REPEAL; CERTIFICATION

### CHAPTER 30

#### SENATE BILL 1046

An Act relating to state government; prescribing rules and regulations to  
 be published; providing for twenty day period after publication in the  
 administrative rules digest of notice of adoption, amendment or repeal

deletions by strikeouts

225

EXHIBIT "C"



NOV-8-91 FRI 15:39

PCAO T CRH

FAX NO. 1602620122

P.02

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

OCT 10 1991

COURT OF APPEALS  
DIVISION TWO

GILBERT GOODE,

Petitioner,

v.

THE HONORABLE MICHAEL D. ALFRED, a  
Judge Pro Tempore for THE SUPERIOR  
COURT OF THE STATE OF ARIZONA,  
COUNTY OF PIMA,

Respondent,

and

THE STATE OF ARIZONA,

Real Party in Interest.

2 CA-SA 91-0120

DEPARTMENT A

O P I N I O N

SPECIAL ACTION PROCEEDINGS

RELIEF DENIED

Lola Clayton Rainey

Tucson

Attorney for Petitioner

Stephen D. Neely, Pima County Attorney  
by Catherine M. Shovlin

Tucson

740-5629

Attorneys for Real Party in Interest

L I V E R M O R E, Chief Judge.

NOV- 8-91 FRI 15:39

PCAO TCR CRIM

FAX NO. 16026201502

P.03

The issue raised in this special action is whether the Arizona Board of Regents (the Board) has statutory authority to establish a police force. Because we conclude that it does and because the issue is based on legal principles instead of controverted issues of fact and is a matter of statewide importance, we accept jurisdiction, *University of Arizona v. Superior Court*, 136 Ariz. 579, 667 P.2d 1294 (1983), and deny relief, affirming the respondent court's reversal of the Pima County Justice court's dismissal of various criminal and civil charges against petitioner Gilbert Goode.

The undisputed facts are as follows. Petitioner was arrested on July 9, 1990, by a University of Arizona police officer for driving while under the influence of alcohol, in violation of A.R.S. § 28-692, and driving on a suspended license, in violation of A.R.S. § 28-1203. He was also cited for failing to provide proof of financial responsibility, A.R.S. § 28-1253, and speeding, A.R.S. § 28-701. The arresting officer was appointed by the Board and received his law enforcement certification from the Arizona Law Enforcement Officers Advisory Council. On June 19, 1991, the Pima County Justice Court dismissed the charges with prejudice, finding that the Board is without the legislative authority to establish a police department and that, therefore, the officer was not authorized to make the arrest and issue the citations. Following the state's special action, the respondent court vacated the order of dismissal and ordered that the charges be reinstated, remanding

A rectangular area at the bottom right of the page has been redacted with heavy black ink.

NOV- 8-91 FRI 15:40

PCAO T. CRIM

FAX NO. 16026201502

P. 04

the matter for further justice court proceedings. This special action followed.

In considering the relevant statutory provisions, we note certain basic tenets of statutory construction. First, when construing several statutes, the provisions should be read together, giving effect to all provisions if possible. *Dupnik v. MacDougall*, 136 Ariz. 39, 664 P.2d 189 (1983). In addition, to determine legislative intent, courts should look to the "words, context, subject matter, effects and consequences, reason and spirit of the law." *City of Phoenix v. Superior Court*, 144 Ariz. 172, 175, 696 P.2d 724, 727 (App. 1985). Statutes should also be construed within the context of related provisions and the statutory scheme. 144 Ariz. at 176, 664 P.2d at 728. "A practical construction is preferred to one which is absurd, and a practical construction is required if a technical construction would lead to mischief or absurdity." *State v. LeMatty*, 121 Ariz. 333, 337, 590 P.2d 449, 453 (1979). Applying these principles, we conclude that this state's legislature has implicitly authorized the Board to establish a police force.

Section 15-1626(A)(2), A.R.S., authorizes the Board to:

Appoint and employ a president or presidents, vice-presidents, deans, professors, instructors, lecturers, fellows and such other officers and employees it deems necessary.

We reject Goode's argument that because neither this provision nor any other statute expressly authorizes the Board to establish a police department, there can be no such authority. The Justice Court supported its conclusion that this authority must be

NOV- 8-91 FRI 15:41

PCAO CRIM

FAX NO. 1602620722

P. 05

express by the fact that where the legislature has given other state agencies such authority, it has done so "affirmatively and unambiguously." Municipal Police, A.R.S. § 9-240(12); Game and Fish Rangers, A.R.S. § 17-211; Railroad Police, A.R.S. § 40-856; Park Rangers, A.R.S. § 11-935(B)(6); The Department of Public Safety, A.R.S. § 41-1711; The Highway Patrol, A.R.S. § 41-1741; Capitol Police, A.R.S. § 41-794; Airport Police, A.R.S. § 2-314; and Community College Police, A.R.S. § 15-1444(9). That these agencies have express authority does not, by negative implication, mean that the Board cannot be implicitly authorized to establish a police force.

Construing A.R.S. § 15-1626(A)(2) in its context and in light of other relevant provisions, we find that it is broad enough to include authorization to establish a police force. Our conclusion is supported in the first instance by A.R.S. § 1-215(23), which, by amendment in 1985, includes within the very definition of a peace officer, "police officers appointed by the Arizona Board of Regents who have received a certificate from the Arizona Law Enforcement Officer Advisory Council." It defies not only traditional principles of statutory construction but logic as well to conclude that although the legislature considers officers appointed by the Board to be peace officers, the Board is without authority to appoint them. Clearly, A.R.S. § 1-215(23) is an acknowledgment of that authority. To conclude otherwise renders that provision meaningless. Moreover, there is no conceivable reason why the legislature would have intended that community colleges be able to establish a police force and

NOV- 8-91 FRI 15:41

PCAO CRIM

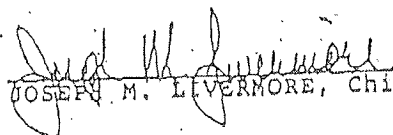
FAX NO. 16026201772

P.06

not the Board that oversees the state's universities. Officers appointed by community college district governing boards are also included in the definition of peace officers under § 1-215(23). Indeed, it is more reasonable to infer that A.R.S. § 1-215(23) is the legislature's acknowledgment of the Board's authority to appoint police officers as part of its broad powers under A.R.S. § 15-1626(A)(2).

We note, as a further reflection of the legislature's intent in this regard, its acquiescence in the inclusion of Board-appointed police officers among those groups eligible to participate in the public safety personnel retirement system. A.R.S. § 38-842(12)(1). The administration of the retirement system is to be managed by local boards for the various agencies represented, including the Board. A.R.S. § 38-847(A).

In conclusion, we hold that the Board is statutorily authorized to establish a police force. Special action relief is denied.

  
JOSEPH M. LIVERMORE, Chief Judge

CONCURRING:

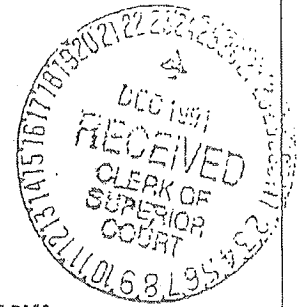
  
MICHAEL A. LACAGNINA, Presiding Judge

  
LAWRENCE HOWARD, Judge



EXHIBIT "G"

JOHN H. GRAFF  
 COCONINO COUNTY PUBLIC DEFENDER  
 COCONINO COUNTY COURTHOUSE  
 FLAGSTAFF, ARIZONA 86001  
 (602) 779-6663  
 SBN-000882



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA )

Plaintiff, )

vs )

Case No. 11654

CLARENCE DIXON, )

MOTION FOR REHEARING

Defendant, )

Petitioner, by and through counsel, moves this court for a rehearing of his petition for post-conviction relief. This motion is made pursuant to Rule 32.9(a) of the Arizona Rules of Criminal Procedure and is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 24th day of December, 1991.

Law Office  
 COCONINO COUNTY PUBLIC DEFENDER

Linda M. Houle  
 LINDA M. HOULE, SEN 009727  
 DEPUTY PUBLIC DEFENDER

# MEMORANDUM OF POINTS AND AUTHORITIES

On July 31, 1991, petitioner filed his Rule 32 petition for post-conviction relief. Counsel filed an amended supplement, pursuant to Rule 32.5(b), on October 18, 1991. A

EXHIBIT G

Office of Public Defender  
COCONINO COUNTY  
COCONINO COUNTY COURTHOUSE  
FLAGSTAFF, ARIZONA 86001  
729 6063

1  
2 State's response was filed on November 20, 1991, followed by  
3 petitioner's reply on December 12, 1991. The petition for  
4 post-conviction relief was denied, by minute entry, on  
5 December 16, 1991. This motion for rehearing followed. All  
6 of petitioner's pleadings are incorporated herein by  
7 reference.

8 Petitioner contends that the court erred in  
9 dismissing his petition as follows:

10 By denying petitioner an evidentiary hearing, the  
11 court kept petitioner from documenting his claims of lack of  
12 jurisdiction and ineffectiveness of counsel. The proof of  
13 such claims exist not in the form of documents, but only in  
14 statements which could be presented as testimony at an  
15 evidentiary hearing.

16 The court cited petitioner's lack of substantiation  
17 for several issues raised; each of those issues involve  
18 allegations that trial counsel failed to investigate motions,  
19 failed to challenge evidence, failed to cross-examine  
20 adequately, and failed to challenge prosecutorial misconduct.  
21 The only substantiation to be shown would be in the form of  
22 testimony at an evidentiary hearing. Petitioner is prevented  
23 from substantiating the claims if he is denied an opportunity  
24 to subpoena trial counsel and question him under oath.

25 In dismissing petitioner's claim that trial counsel

26 EXHIBIT G



1 failed to challenge the NAU Police Department's authority to  
 2 conduct criminal investigations, the court overlooked the fact  
 3 that Goode v. Alfred, 97 Ariz. Adv. Rep. 27, was based on  
 4 statutory construction and that the statutes cited had been  
 5 amended subsequent to petitioner's arrest and conviction.  
 6 Changes in A.R.S. §1-215(23) and A.R.S. 14-1627 after  
 7 petitioner's arrest may well have conferred that ability upon  
 8 NAU police officers where it did not exist previously.  
 9

10 As appeal counsel was unaware of these issues, and  
 11 failed to raise them, petitioner alleges ineffectiveness  
 12 against appeal counsel as well.

13 Therefore, petitioner respectfully requests that the  
 14 court grant him a rehearing of his petition for post-  
 15 conviction relief.

16 RESPECTFULLY SUBMITTED this 24th day of December,  
 17 1991.

18 Law Office  
 19 COCONINO COUNTY PUBLIC DEFENDER

20 Linda M. Houle  
 21 LINDA M. HOULE, SBN 009727  
 22 DEPUTY PUBLIC DEFENDER

23 COPY of the foregoing delivered  
 24 this 24th day of December 1991 to:

25 Mike Hinson, County Attorney

26 by Laurie Spady

EXHIBIT G

CLERK OF SUPERIOR COURT  
 COCONINO COUNTY  
 COCONINO COUNTY COURTHOUSE  
 FLAGSTAFF, ARIZONA 86001  
 779 0061

EXHIBIT "J"

DIVISION 1  
COURT OF APPEALS  
STATE OF ARIZONA

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FILED DEC 3 1992  
GLEN D. CLARK, CLERK

STATE OF ARIZONA,	)	1 CA-CR 92-0171-PR
	)	
Respondent,	)	Department C
	)	
v.	)	MEMORANDUM DECISION
	)	(Not for Publication,
CLARENCE WAYNE DIXON,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Petitioner.	)	
	)	
	)	

Petition for Review from the Superior Court of Coconino County

(Rule 32.9(C), Arizona Rules of Criminal Procedure

Cause No. CR-11654

The Honorable Richard K. Mangum, Judge

REVIEW GRANTED; RELIEF DENIED

---

John Verkamp, Coconino County Attorney  
by Michael H. Hinson, Deputy County Attorney  
Attorneys for Respondent Flagstaff

John H. Grace, Coconino County Public Defender  
by Linda M. Houle, Deputy Public Defender  
Attorneys for Petitioner Flagstaff

---

This petition for review has been considered by the court,  
Presiding Judge Rudolph J. Gerber, and Judges Ruth V. McGregor and  
Philip E. Toci participating.

#### BACKGROUND

Petitioner Clarence Wayne Dixon (defendant) was convicted  
after a jury trial of aggravated assault, a class 3 felony;  
kidnapping, a class 2 felony; sexual abuse, a class 5 felony; and  
four counts of sexual assault, each a class 2 felony. All counts  
were designated dangerous offenses. Dixon admitted committing the

crimes while on parole. On January 6, 1986, the trial court sentenced him to life imprisonment on each count with the sentences to run consecutively.

The Arizona Supreme Court affirmed Dixon's conviction and sentences on direct appeal. State v. Dixon, 153 Ariz. 151, 735 P.2d 761 (1987). On July 31, 1991, he filed a petition for post-conviction relief. The trial court denied his petition and his motion for rehearing.

Dixon accosted the victim, a 20-year-old Northern Arizona University (NAU) student, as she was jogging on a dirt road south of the campus. He dragged her off the road and into a secluded clearing in the forest. After tying her hands behind her back with a rope, he forced her to engage in numerous sexual acts while threatening her with a knife. Dixon was arrested later that day by a member of the Flagstaff Police Department. The NAU Police Department participated in the investigation.

#### DISCUSSION

Only those claims preserved in a petitioner's motion for rehearing are reviewed by this court. State v. Bortz, 169 Ariz. 575, 578, 821 P.2d 236, 239 (App. 1991). In his motion for rehearing, Dixon preserves the argument that the trial court erred in denying him an evidentiary hearing, thus preventing him from documenting his claims of ineffectiveness of counsel and lack of jurisdiction of the NAU Police Department.

In his amended supplement to his petition for post-conviction relief, he contends that counsel was ineffective because he failed

to: (1) challenge the authority of the NAU Police Department to conduct criminal investigations; (2) challenge the imposition of consecutive sentencing; (3) investigate the origins of the knife admitted into evidence; (4) file motions to suppress evidence obtained in the search; (5) challenge the legality of the warrant; (6) challenge the grand jury indictment for prosecutorial failure to present exculpatory evidence; (7) challenge the admissibility of evidence, in particular, the knife; (8) adequately cross-examine the victim about the description of the knife; (9) challenge the prosecutor's use of peremptory strikes to remove Native Americans from the prospective pool of jurors; (10) advise petitioner that his refusal to cooperate with the probation officer's preparation of a pre-sentence report could lead to a negative report; and (11) advise petitioner that statements he made in the pre-sentence report could not be used against him for purposes of his appeal.

A defendant is entitled to an evidentiary hearing if his petition presents a colorable claim. State v. D'Ambrosio, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). Bald assertions alone are not colorable. State v. Borbon, 146 Ariz. 392, 399, 706 P.2d 718, 725 (1985). In order to make a colorable claim of ineffective assistance of counsel, defendant must demonstrate that the attorney's representation fell below prevailing professional standards. Id. The defendant also must show that the deficient representation caused him prejudice in the sense that the outcome would probably have been different with effective representation. State v. Nash, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

Regarding the NAU Police Department's authority, Dixon relies upon a now-reversed opinion rendered by a justice of the peace on the jurisdiction of campus police. This authority is no longer the law. Goode v. Alfred, 171 Ariz. 94, 828 P.2d 1235 (App. 1991).

Dixon offers no other substantiation. He presents no records, affidavits, or citations to current law to support his allegations. He fails to state how he was prejudiced by counsel's representation. He merely requests that we grant him a hearing so that he can question trial counsel under oath. This reason fails to raise a colorable claim justifying a hearing. Borbon, 146 Ariz. at 400, 706 P.2d at 726.

Dixon's claims also are subject to preclusion. Rule 32.2(a)(3) bars relief on claims "[k]nowingly, voluntarily and intelligently not raised at trial, on appeal, or in any previous collateral proceeding." Dixon failed to raise all but one claim in his direct appeal before the Arizona Supreme Court. The one claim he did raise - imposing consecutive sentences - was rejected by that court. He therefore is precluded from raising these claims in his petition for post-conviction relief. State v. Carriger, 143 Ariz. 142, 692 P.2d 991 (1984).

#### CONCLUSION

A petition for post-conviction relief is addressed to the sound discretion of the trial court. State v. Schrock, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). The court's decision will not be reversed unless an abuse of discretion affirmatively appears. Id. The trial court acted within its discretion in

denying both Dixon's petition for post conviction relief and a hearing. The trial court properly considered his lack of substantiation, lack of a showing of prejudice, and the fact that his claims were subject to preclusion as factors in its decision.

We grant review of the petition and deny relief.

## Appendix E



# COMMERCIAL FLIGHT OPERATIONS OR REMOVAL OF REGULATION

## CHAPTER 27

### SENATE BILL 1039

transportation, providing for the removal of the regulation by the aeronautics division of commercial and flying clubs, making statutory conforming in section 28-1749 and title 28, chapter 12, article 6, and Statutes and amending section 40-205, Arizona Re-

Legislature of the State of Arizona:

title 28, chapter 12, article 6, Arizona Revised Statutes, are

205, Arizona Revised Statutes, is amended to read:

ion of commercial flight operators by commission pro-  
bly definitions.

Any other provision of law to the contrary notwithstanding,  
tion shall have no power or authority to may not regulate  
ations or commercial flight operators, as defined in § 28-1749.

this section:

ht operation means the carrying of persons or goods for hire,  
or of flight instruction for compensation.

ht operator means a person who conducts commercial flight

verior, March 27, 1981.

of the Secretary of State, March 27, 1981.

## ICERS—PUBLIC SAFETY DEPARTMENT OMMISSIONED PERSONNEL

### CHAPTER 28

#### SENATE BILL 1042

general provisions; prescribing definition of "peace  
le certain department of public safety personnel, and  
n 1-215, Arizona Revised Statutes.

Legislature of the State of Arizona:

215, Arizona Revised Statutes, is amended to read:

laws of the state, unless the context otherwise requires:

Changes or additions in text are indicated by underline;

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adult" means a person who has attained the age of eighteen years.
3. "Bribe" signifies anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in his action, vote or opinion, in any public or official capacity.
4. "Child" or "children" as used in reference to age of persons means persons under the age of eighteen years.
5. "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.
6. "Daytime" means the period between sunrise and sunset.
7. "Depose" includes every manner of written statement under oath or affirmation.
8. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.
9. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.
10. "Inhabitant" means a resident of a city, town, village, district, county or precinct.
11. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.
12. "Knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the statute using such word. It does not require any knowledge of the unlawfulness of the act or omission.
13. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and judges of the supreme court, judges of the superior court, justices of the peace and police magistrates in cities and towns.
14. "Majority" or "age of majority" as used in reference to age of persons means the age of eighteen years or more.
15. "Malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
16. "Mentally ill person" includes an idiot, an insane person, a lunatic or a person non compos.
17. "Minor" means a person under the age of eighteen years.
18. "Minor children" means persons under the age of eighteen years.
19. "Month" means a calendar month unless otherwise expressed.
20. "Neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.
21. "Nighttime" means the period between sunset and sunrise.
22. "Oath" includes affirmation or declaration.
23. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns and commissioned personnel of the department of public safety.
24. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

deletions by strikeouts

223

## LEGISLATURE

FIRST REGULAR SESSION—1981

... 30

pay, goods, chattels, dogs, things in action and  
 or summons issued in the course of judicial  
 and personal property.

with lands, tenements and hereditaments.  
 fied mail.

paper issuing from a court or public office to  
 required to be affixed, means the impression  
 on of the seal affixed thereto by means of a

cludes mark, when a person cannot write, with  
 ed by a person who writes his own name as

rent parts of the United States, includes the  
 e territories.

r of oral statement under oath or affirmation.  
 istrict of Columbia and the territories.

to shipping, includes ships of all kinds, steam-  
 and every structure adapted to navigation from  
 f persons or property.

to conduct or to a circumstance described by a  
 ion is aware or believes that his or her conduct  
 ince exists.

cept in writing issued in the name of the state

7, 1981.

of State, March 27, 1981.

# PROPOSED CAPITAL LEVY V—NOTICE

AFTER 29

TE BILL 1078

escribing that the governing board of a  
 within fifteen days prior to a hearing on a  
 and amending section 15-962, Arizona  
 y Laws 1981, chapter 1, section 2.

he State of Arizona:

a Revised Statutes, as added by Laws 1981,  
 ad:

y; items for which levy may be expended  
 pt and may subsequently amend a capital levy  
 collected as provided in this section are to be

ditions in text are indicated by underline:

expended. The capital levy plan shall not extend for a period in excess of five years,  
 and the accumulation of funds monies shall not exceed a five year period. Funds  
 Monies collected as provided in this section shall be expended only in accordance with  
 the following:

1. A capital levy plan shall follow a standard format as prescribed in the uniform  
 system of financial records.

2. A capital levy plan shall be adopted or amended at a public hearing on the  
 proposed plan and the governing board shall publish notice in a newspaper of general  
 circulation within the school district within ten (10) days prior to the hearing.

3. If the governing board adopts or amends a capital levy plan after January 1,  
 1980 that includes the construction of school buildings or the purchase of school sites,  
 the portion of the plan that includes the construction of school buildings or purchase  
 of school sites shall not be implemented until that portion of the plan is approved by a  
 majority of the qualified electors voting in an election called for such purpose. The  
 election shall be conducted and the notice and ballots shall be prepared as provided in  
 § 15-481.

B. Subsequent to the adoption of a capital levy plan, and at the request of the  
 governing board of a school district, the county school superintendent shall include in  
 his estimate to the board of supervisors the items prescribed by this section and the  
 board of supervisors may make a levy on the property of the school district sufficient  
 to produce the amount asked for, but a levy for such purpose shall not exceed thirty  
 cents on each one hundred dollars of property valuation for a common school district  
 or a high school district and sixty cents for each one hundred dollars of property  
 valuation for each unified school district organized pursuant to § 15-448. Funds  
 Monies collected pursuant to the levy may be accumulated for a period of five years  
 and, if not needed to be used for a period of ten days or more, may be invested in the  
 same manner as debt service fund monies as prescribed by § 15-1025.

C. The governing board shall include in its annual budget the following items  
 which may be paid from the capital levy revenues prescribed by this section:

1. The purchase or lease of sites, improvement of school grounds, erecting,  
 purchasing, leasing, improving and furnishing of school buildings and appurtenances.

2. The improving and furnishing of buildings used for school purposes when such  
 buildings are leased from the national park service.

B. The purchase, lease-purchase or lease of pupil and nonpupil vehicles and  
 transportation equipment, portable classrooms or specialized electronic, audiovisual  
 and computer equipment.

Approved by the Governor, March 27, 1981.

Filed in the Office of the Secretary of State, March 27, 1981.

## STATE AGENCY ADMINISTRATIVE RULES AND REGULATIONS—PUBLICATION; ADOPTION; AMENDMENT; REPEAL; CERTIFICATION

### CHAPTER 30

#### SENATE BILL 1046

An Act relating to state government; prescribing rules and regulations to  
 be published; providing for twenty day period after publication in the  
 administrative rules digest of notice of adoption, amendment or repeal

deletions by strikeouts

225

and hearing department would provide hearing test services to district, but parties would have to be acting jointly to exercise powers common to the parties to a contract to qualify as an inter-governmental agreement. Op. Atty. Gen. No. 183-057.

shields on property of institutions un-  
ction of board; sanctions; powers of  
ficers

agents shall have authority to adopt control of vehicles on property of the institution with respect to the following only: direction of travel, authorized hours of use, place of parking, method of parking, and designation of special parking spaces and the general public. The board may also collect reasonable fees for special parking.

The board shall cause signs and notices to be posted on the property for the regulation of vehicles.

regulations adopted by the Arizona subsection A shall be enforced administered by the Arizona board of reg- its jurisdiction. As to students, fac- s may, but need not, involve both stu- bodies, so long as all procedures give opportunity to be heard concerning the ction to be imposed upon him as a re- Administrative and disciplinary sanc- dents, faculty and staff for unauthor- it limited to: a reasonable monetary iscipline, withdrawal or suspension of umbrances of records or grades, or mand. Habitual or flagrant disregard a ground for suspension or expulsion lent and may be taken into considera- regard to amount of salary and contin-

public who park their vehicles in an  
property of an institution under the  
rd of regents shall be warned concern-  
; and, if they continue, or if such per-  
598

ARIZONA BOARD OF REGENTS  
Ch. 13

§ 15-1628

sous habitually park in such an unauthorized manner, the vehicles so parked may be impounded by the institution and a reasonable fee exacted for the cost of impoundment and storage, if any, prior to the release of the vehicles to their owners or their duly authorized representatives.

D. Any person who has received a final administrative ruling concerning a sanction imposed upon him as a result of unauthorized parking shall have the right to have that ruling reviewed by the superior court of the county in which the institution involved is situated, in accordance with the provisions of the administrative review act, title 12, chapter 7, article 6.<sup>1</sup>

E. This section shall be considered supplemental in nature to the general common law and statutory powers of institutions under control of the board as to the internal control and activities of their students, faculty and staff.

F. The security officers of each of the institutions shall have the authority and power of peace officers for the protection of property under the jurisdiction of the board, the prevention of trespass, the maintenance of peace and order, only insofar as may be prescribed by law, and in enforcing the regulations respecting vehicles upon the property.

G. The designation as "peace officer" shall be deemed to be a peace officer only for the purpose of this section.

Added by Laws 1981, (Ch. 1, § 2, eff. Jan. 23, 1981).

<sup>1</sup> Section 12.4811 et seq.

### Historical Note

**Source:**

Laws 1967, Ch. 101, § 1.  
A.R.S. former § 16-72501.  
Laws 1968, Ch. 80, § 1.

### Library References

Colleges and Universities 6-8(5).

U.S. Colleges and Universities 514

§ 15-1628. Powers and procedures pertaining to optional retirement programs

A. The Arizona board of regents may establish optional retirement programs under which contracts providing retirement and death benefits may be purchased for members of the faculty and administrative officers of the institutions under its jurisdiction. The benefits to be provided for or on behalf of participants in the optional retirement program shall be provided through annuity contracts.

## Appendix F

# AFFIDAVIT OF CLARENCE WAYNE DIXON

I, Clarence Wayne Dixon, hereby swear under penalty of perjury that the following statement is true and correct to the best of my knowledge and belief:

1. That I am a state prisoner currently detained in the Arizona State Prison Complex, Florence.
2. That on November 26, 2003, I was indicted for the first degree murder of Deana Lynn Bowdoin on January 7, 1978.
3. That I was notified on March 28, 2003, that the death penalty would be sought against me at trial.
4. That in Mid-2003, Maricopa County Deputy Public Defenders Victoria Washington and Vikki Liles were appointed to represent me.
5. That shortly thereafter, Maricopa County Deputy Public Defender Garrett Simpson replaced Ms. Washington.
6. That during one of several jail visits, Ms. Liles asked me to take a battery of neuropsychological tests.
7. That I agreed to participate in Ms. Liles' desired neuropsychologist assessment on the condition that she move to suppress the DNA evidence in my case on the basis that my DNA was illegally obtained in 1985.
8. That Ms. Liles agreed to file my desired DNA suppression motion pre-trial in exchange for my participation in a neuropsychological assessment.
9. That approximately one month after Ms. Liles and I made this agreement, I took a variety of neuropsychological test batteries that were administered to me by two women from San Francisco, California.



0. That between 2003 and 2006, neither Ms. Liles nor Ms. Simpson filed the DNA suppression motion Ms. Liles promised me should would file.
1. That it was due solely to Ms. Liles breaking her promise to me, and violating my trust; that I decided to proceed pro per at my Capital trial due to the irreparable breakdown in communication this caused.
2. That I subsequently sought the advice of well-known Criminal Defense Attorney, Larry Hammond, who believed that my desired DNA suppression motion had merit.
3. That on January 15, 2008, I was convicted of 1st degree Murder and on January 24, 2008, I was sentenced to death.
4. That I was assigned Attorney, Consuelo Ohanesian to prepare my Appeal.
5. That in a series of letters, I strongly urged (and requested) that Ms. Ohanesian raise a claim that the Northern Arizona University (NAU) police lacked jurisdiction to investigate me for a 1985 assault on an NAU student (hereafter "NAU Issue").
6. That despite my requests, Ms. Ohanesian did not raise the NAU Issue.
7. That after the appeal of my 1st degree murder conviction and death sentence were denied on May 6, 2011, I was assigned Kerrie M. Proban to represent me in state Postconviction proceedings.
8. That through correspondence and one prison visit with Ms. Proban, I urged (and requested) that she raise the NAU Issue in my Post-conviction application.
9. That Ms. Proban never raised the NAU Issue.

20. That after my postconviction application and Petition for Review to the Arizona Supreme Court were denied, my case proceeded to Federal Habeas where I was appointed counsel at the Federal Public Defender's Office for the District of Arizona to represent me.

1. That I was represented in my Federal Habeas case by Sara Stone and Karen Wilkinson.

2. That I wanted Ms. Stone and Ms. Wilkinson to raise the NAU issue in my Federal Habeas Petition.

3. That the NAU Issue was never raised in my Federal Habeas Proceedings.

State of Arizona )

County of Maricopa ) ss.

Signed this 7 day of APRIL, 2021 at AZ STATE PRISON

Clarence W Dixon

(Signature of Affiant)

Mr. Clarence Wayne Dixon

State of Arizona

County of Pinal

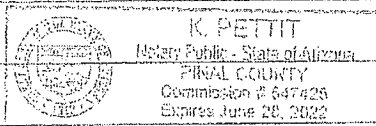
Subscribed and Sworn to before me this 7<sup>th</sup> day of April, 2021  
by Clarence W. Dixon:



My Commission expires: 6-28-2022

NOTARY PUBLIC

Commission No. 547425



Type/Title: Affidavit of Clarence Wayne Dixon



CLARENCE W. DIXON, 03977

ARIZONA STATE PRISON, BOX 8200

FLORENCE, AZ 85132

IN PRISON PERIOD

IN THE SUPREME COURT OF THE UNITED STATES

CLARENCE WAYNE DIXON,

NO.

RESPONDENT.

V.

CERTIFICATE OF SERVICE

STATE OF ARIZONA, ET AL.

RESPONDENT.

I HEREBY CERTIFY THAT COPIES OF THE FOREGOING IFP

MOTION, CERT. PETITION, AND AFFIDAVIT WERE SERVED VIA US MAIL ON THE

OFFICE OF THE ARIZONA STATE ATTORNEY GENERAL ON THIS SAME DATE

CLARENCE WIDMAN


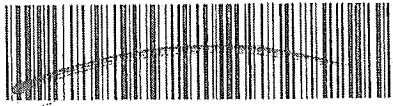
CLARENCE WIDMAN, PRO SE

NO. 03P977

FEDERAL PUBLIC DEFENDER  
for the District of Arizona  
Capital Habeas Unit  
850 West Adams Street, Suite 201  
Phoenix, Arizona 85007

NOV 18 2021

RECEIVED  
NOV 16 2021  
AZ DISTRICT CLERK  
PHOENIX, ARIZONA

<b>P</b>	\$7.41 US POSTAGE 1 LB PRIORITY MAIL RATE ZONE 1 NO SURCHARGE Certified	98280008473230 FROM 85007
		Stamp 8101016 11/12/2021
<b>PRIORITY MAIL 1-DAY™</b>		
Federal Public Defender District of Arizona Capital Habeas Unit 850 W. Adams St, Suite 201 Phoenix AZ 85007		0005
<b>C027</b>		
SHIP TO:	Michael Gottfried, Unit Chief Counsel Office of the Arizona Attorney General 2005 N. Central Ave. Phoenix AZ 85004-1592 Dept of Corrections Unit	
<b>USPS TRACKING #</b>		
		
9405 5118 9956 0844 1149 01		

1  
2  
3  
4  
5  
6  
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,  
10  
11 Plaintiff,

12 v.

13 CLARENCE WAYNE DIXON,  
14  
15 Defendant.

**Pinal County**  
**Case No. S1100CR202200692**

Maricopa County  
Case No. CR2002-019595

Arizona Supreme Court  
Case No. CR-08-0025-AP

**Order**

**(Capital Case)**

(Hon. Robert Carter Olson)

16  
17  
18  
19 Pending before this Court is a Motion to Associate Counsel Pro Hac Vice filed by  
20 Cary Sandman, counsel for Clarence Wayne Dixon. With Mr. Sandman's consent to appear  
21 as local counsel,

22 **IT IS ORDERED** that Assistant Federal Public Defenders Eric Zuckerman and  
23 Amanda C. Bass be admitted pro hac vice as counsel for Clarence Wayne Dixon in this  
24 matter.

25  
26  
27  
28



eSigned by Olson,Robert 04/12/2022 17:37:20 3MmoUF57



Discussions are held regarding the scheduled execution date and deadline for obtaining competency evaluations and holding hearing prior to that date.

Counsel for Defendant requests appointment of Dr. Lauro Amezcua-Patino to evaluate Defendant.

Counsel for State requests appointment of Dr. Carlos Vega to evaluate Defendant.

Opposing counsel having no objection to nominations,

IT IS HEREBY ORDERED appointing **Dr. Lauro Amezcua-Patino and Dr. Carlos Vega** to conduct an evaluation of the above-named defendant pursuant to Arizona Rules of Criminal Procedure 11.3 and A.R.S. §13-4509. COPIES OF THIS REPORT SHALL BE DISTRIBUTED AS DIRECTED BY THE VULNERABLE PERSONS UNIT.

IT IS FURTHER ORDERED the Vulnerable Persons Unit shall issue a Notice of Appointment.

The Court notes that the issues involved in this matter are more than those covered by a general Rule 11 Exam and the appointed doctors should reach out to the Attorney General's Office for guidance in the issues to be evaluated.

Discussions are held regarding the need for opposing counsel to interview the appointed doctors and any other experts that might be called to testify.

FURTHER ORDERED directing counsel to use their best efforts to arrange times that are convenient for the doctors and attorneys so that opposing counsel interviews can be completed sufficiently in advance of the next hearing.

Counsel for State advises that it's Response will be filed later this week, to document the State's position in the court record.

FURTHER ORDERED directing Counsel for State to file it's Response as quickly as is practicable.

FURTHER ORDERED setting this matter for HEARING ON COMPETENCY on Tuesday, May 3, 2022, at 9:00 a.m., before the Honorable Robert Carter Olson.

FURTHER ORDERED victims may appear virtually, if desired, for the May 3, 2022 hearing, by providing this Court's Judicial Assistant (Connie: [cherrera@courts.az.gov](mailto:cherrera@courts.az.gov)) with a valid email address.

For the purposes of security, because the defendant is in the custody of the Arizona Department of Corrections,

FURTHER ORDERED the following conditions shall apply:

1. The Warden, through his/her staff, may require the physician to subject all instruments, equipment, manuals and the like to an inspection and inventory prior to and subsequent to any meeting with the defendant.
2. If requested by the physician, the Warden, through staff, shall remove the defendant's handcuffs in order to complete certain tests. However, the defendant shall at all times remain in leg irons.
3. If requested, by the physician, the Warden, shall order removal of any flack jacket and/or goggles provided by the ADOC, if in the physician's opinion such items interfere with the testing and evaluation of defendant.
4. The meeting shall be confidential and take place in a room that allows for privacy. If requested, the door to the room shall remain closed. The room may have windows which allow the Warden, through his/her staff, to observe the meeting. Physician shall sit in a chair closest to the door, and inmate is not to pass between the physician and the door without permission.
5. The physician shall be allowed to have physical contact with the defendant as necessary to conduct testing.
6. The Arizona Department of Corrections shall be held harmless from any liability resulting from any injury or harm inflicted upon physician by the defendant during the course of the meetings described above; provided however, that such release from liability shall not extend to a release from liability for acts arising out of ADOC's own negligence or actionable wrong doing.

---

FURTHER ORDERED directing the Court Reporter to expedite transcripts from each hearing held in this matter, and to provide a copy of the transcripts to Counsel for State and Counsel for Defendant.

Filed on 4/15/2022 9:16:58 AM

**Mailed/distributed copy:** 04/15/2022

JEFF SPARKS

CARY SANDMAN

ERIC ZUCKERMAN

AMANDA BASS

COLLEEN CLASE

**Office Distribution:**  
**COURT REPORTER/CRAITH**  
**VULNERABLE PERSONS UNIT**  
**VICTIMS ASSISTANCE**  
**JUDGE/OLSON**



1 Jon M. Sands  
2 Federal Public Defender  
3 Cary Sandman (AZ No. 004779)  
4 Assistant Federal Public Defender  
5 407 W. Congress, Suite 501  
6 Tucson, Arizona 85701  
7 cary\_sandman@fd.org  
8 Telephone: 520.879.7500  
9 Facsimile: 520.622.6844

10 *Counsel for Defendant*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF PINAL**

13 STATE OF ARIZONA,

14 Plaintiff,

15 v.

16 CLARENCE WAYNE DIXON,

17 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-  
0025-AP

18 **MOTION TO ASSOCIATE COUNSEL**  
19 **PRO HAC VICE**

20 **(Capital Case)**

(Hon. Robert Carter Olson)

21 Petitioner Clarence Wayne Dixon, through undersigned counsel, pursuant to Rule 39,  
22 Ariz. R. Sup. Ct., respectfully moves that Assistant Federal Public Defenders Eric Zuckerman  
23 and Amanda C. Bass be appointed pro hac vice as his counsel in these proceedings. Mr.  
24 Zuckerman and Ms. Bass are associated with undersigned counsel as attorneys with the Federal  
25 Public Defender's Office, District of Arizona, and have been assisting undersigned counsel  
26 with the legal work attendant to these proceedings. In support of this motion, and pursuant to  
27 Rule 39(a)(2)(E), the following original documents are attached:

- 28 1. Verified Application of Eric Zuckerman to Appear *Pro Hac Vice*

2. Verified Application of Amanda Bass to Appear *Pro Hac Vice*
3. Certificates of Good Standing for Eric Zuckerman
4. Certificate of Good Standing for Amanda Bass
5. State Bar of Arizona Notice of Receipt of Complete Application of Eric Zuckerman
6. State Bar of Arizona Notice of Receipt of Complete Application of Amanda Bass

Cary Sandman hereby agrees to serve as local counsel in this matter and accepts the responsibilities detailed in Rule 39(a), Ariz. R. Sup. Ct.

Based on the foregoing, it is respectfully requested that the motion to associate counsel pro hac vice be granted.

RESPECTFULLY SUBMITTED this 12th day of April, 2022.

JON M. SANDS  
Federal Public Defender

Cary Sandman  
Assistant Federal Public Defender

s/Cary Sandman  
Counsel for Defendant

**Certificate of Service**

I hereby certify that on April 12, 2022, an original and copies of the foregoing document were electronically filed.

And emailed to:

Jeffrey L. Sparks  
Acting Unit Chief  
Arizona Attorney General's Office  
Jeffrey.Sparks@azag.gov

Capital Litigation Docket  
Arizona Attorney General's Office  
CLDocket@azag.gov

Colleen Clase  
Attorney for Leslie James  
Colleen.avcv@gmail.com

s/Jessica Golightly  
Assistant Paralegal

1  
2  
3  
4  
5  
6  
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF PINAL**

9 STATE OF ARIZONA,

10 Plaintiff,

11 v.

12 CLARENCE WAYNE DIXON,

13 Defendant.

Pinal County Case No. S1100CR202200692

Maricopa County Case No. CR2002-019595

Arizona Supreme Court Case No. CR-08-  
0025-AP

**[Proposed] Order**

**(Capital Case)**

(Hon. Robert Carter Olson)

14  
15  
16  
17 Pending before this Court is a Motion to Associate Counsel Pro Hac Vice filed by  
18 Cary Sandman, counsel for Clarence Wayne Dixon. With Mr. Sandman's consent to appear  
19 as local counsel,

20 **IT IS ORDERED** that Assistant Federal Public Defenders Eric Zuckerman and  
21 Amanda C. Bass be admitted pro hac vice as counsel for Clarence Wayne Dixon in this  
22 matter.

23 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

24  
25  
26  
27  
28  

---

The Honorable Robert Carter Olson  
Pinal County Superior Court

State of Arizona v. Clarence Wayne Dixon  
Exhibits to Motion to Associate Counsel Pro Hac Vice

---

- Exhibit 1 Verified Application of Eric Zuckerman to Appear *Pro Hac Vice*
- Exhibit 2 Verified Application of Amanda Bass to Appear *Pro Hac Vice*
- Exhibit 3 Certificates of Good Standing for Eric Zuckerman
- Exhibit 4 Certificate of Good Standing for Amanda Bass
- Exhibit 5 State Bar of Arizona Notice of Receipt of Complete Application of Eric Zuckerman
- Exhibit 6 State Bar of Arizona Notice of Receipt of Complete Application of Amanda Bass

# Exhibit 1



Attn: Pro Hac Vice Dept  
P.O. Box 842699  
Los Angeles, CA 90084-2699  
Phone: 602-340-7239

For Official Use Only

App# \_\_\_\_\_

Bar Number# \_\_\_\_\_

Overnight or Hand Delivery:  
4201 N. 24th St., Ste 100  
Phoenix, AZ 85016-6266

### Application for Appearance Pro Hac Vice

#### **PART I: Applicant Information**

Name of Applicant: Eric Cooper Zuckerman

Firm/Company Name: Office of the Federal Public Defender, District of Arizona

Office Address: 850 West Adams Street, Suite 201

Telephone: 602-382-2816 Fax: 602-382-2801 Email Address: eric\_zuckerman@fd.org

Residence Address: 3069 W 11th Avenue Cir, Broomfield CO 80020

Title of cause or case where applicant seeks to appear: State of Arizona v Clarence Dixon

Docket Number: S1100CR202200692

Court, Board, or Administrative Agency: Superior Court, Pinal County

Party on whose behalf applicant seeks to appear: Clarence Dixon

#### **Pursuant to Arizona Supreme Court Rule 39(a)(2), the applicant shall complete the information below:**

Courts to Which Applicant Has Been Admitted:  
(Attach additional pages if necessary)

Pennsylvania

Utah

Date of Admission:

12/29/2009

05/04/2018

Bar Number:

307979

16742

☒ Applicant is a member in good standing in such courts.

☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law. If yes, specify the jurisdiction, nature of investigation and contact information of the disciplinary authority investigating on an additional page.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Ariz. R. Sup. Ct., Rule 39(a) in the following:

Title of Matter:	Docket #:	Court or Agency:	App Granted? (Y/N)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.

If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_



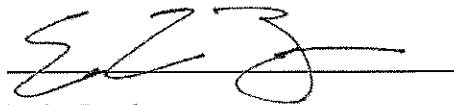


**Verified Addendum to Application for Admission Pro Hac Vice**

In support of a waiver of the pro hac vice filing fees and pursuant to Arizona Supreme Court Rule 39, I certify that all clients represented in this action are indigent and that no attorney fee shall be paid by the client.

4/7/2022

Date signed

A handwritten signature in black ink, appearing to read 'EZ', is written over a horizontal line.

Eric Zuckerman

Assistant Federal Public Defender  
Office of the Federal Public Defender  
District of Arizona  
801-524-6043  
eric\_zuckerman@fd.org

## COVID-19 Temporary Verification

This Form is intended to be a required supplement to State Bar of Arizona applications and certifications during the period of pandemic health advisories and the related emergency orders of the federal government, the Governor of Arizona, and the Supreme Court of Arizona. This unsworn declaration, under penalty of perjury, is to be submitted in lieu of a notarized verification pursuant to Arizona Rules of Civil Procedure, Rule 80(c).

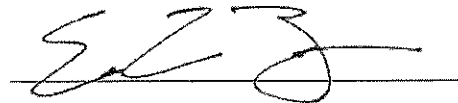
State of Arizona )  
 ) ss.  
County of Pinal )

I, Eric Zuckerman, a member of the State Bar of UT/PA, submit this unsworn verification in support of my:

- ☐ Resignation of Membership
- ☒ Application for Appearance *Pro Hac Vice*
- ☐ Application for In-House Counsel certification
- ☐ Application for transfer to Inactive / Retired status
- ☐ Application for Reinstatement after Summary Suspension by the Board of Governors

I hereby declare and verify, under the penalty of perjury, that the foregoing information and that on the applicable application form is true and correct.

Dated: 4/9/2022

  
Attorney signature

# Exhibit 2



Attn: Pro Hac Vice Dept  
P.O. Box 842699  
Los Angeles, CA 90084-2699  
Phone: 602-340-7239

For Official Use Only

App# \_\_\_\_\_

Bar Number# \_\_\_\_\_

Overnight or Hand Delivery:  
4201 N. 24th St., Ste 100  
Phoenix, AZ 85016-6266

### Application for Appearance Pro Hac Vice

#### **PART I: Applicant Information**

Name of Applicant: Amanda Bass

Firm/Company Name: Office of the Federal Public Defender, District of Arizona

Office Address: 850 West Adams Street, Suite 201

Telephone: 602-382-2816 Fax: 602-382-2801 Email Address: amanda\_bass@fd.org

Residence Address: 1727 W. Earll Drive, Phoenix, AZ 85015

Title of cause or case where applicant seeks to appear: State of Arizona v Clarence Dixon

Docket Number: S1100CR202200692

Court, Board, or Administrative Agency: Superior Court, Pinal County

Party on whose behalf applicant seeks to appear: Clarence Dixon

**Pursuant to Arizona Supreme Court Rule 39(a)(2), the applicant shall complete the information below:**

Courts to Which Applicant Has Been Admitted: <small>(Attach additional pages if necessary)</small>	Date of Admission:	Bar Number:
<u>Alabama Supreme Court</u>	<u>September 30, 2015</u>	<u>1008-H16R</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

☒ Applicant is a member in good standing in such courts.

☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law. If yes, specify the jurisdiction, nature of investigation and contact information of the disciplinary authority investigating on an additional page.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Ariz. R. Sup. Ct., Rule 39(a) in the following:

Title of Matter:	Docket #:	Court or Agency:	App Granted? (Y/N)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.

If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_



Verified Addendum to Application for Admission Pro Hac Vice

In support of a waiver of the pro hac vice filing fees, I certify that all clients represented in the action are indigent and that no attorney fee shall be paid by the client.

April 9, 2022

Date signed

/s/ Amanda Bass

Amanda Bass

Assistant Federal Public Defender  
Office of the Federal Public Defender  
District of Arizona  
602-382-2816  
amanda\_bass@fd.org

## COVID-19 Temporary Verification

This Form is intended to be a required supplement to State Bar of Arizona applications and certifications during the period of pandemic health advisories and the related emergency orders of the federal government, the Governor of Arizona, and the Supreme Court of Arizona. This unsworn declaration, under penalty of perjury, is to be submitted in lieu of a notarized verification pursuant to Arizona Rules of Civil Procedure, Rule 80(c).

State of Arizona )  
County of Pinal ) ss.

I, Amanda Bass, a member of the State Bar of Alabama, submit this unsworn verification in support of my:

- ☐ Resignation of Membership
- ☒ Application for Appearance *Pro Hac Vice*
- ☐ Application for In-House Counsel certification
- ☐ Application for transfer to Inactive / Retired status
- ☐ Application for Reinstatement after Summary Suspension by the Board of Governors

I hereby declare and verify, under the penalty of perjury, that the foregoing information and that on the applicable application form is true and correct.

Dated: April 9, 2022

/s/ Amanda C. Bass  
Attorney signature

# Exhibit 3



# ***CERTIFICATE OF GOOD STANDING***

\*This document expires 60 days from the date of issuance\*

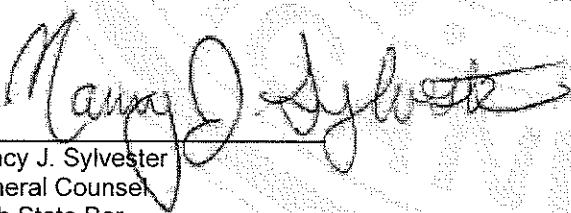
Issued on 4/7/2022

To Whom it May Concern:

Re: CERTIFICATE OF GOOD STANDING for Eric Zuckerman

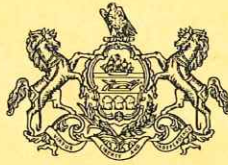
This is to certify that Eric Zuckerman, Utah State Bar No. 16742 was admitted to practice law in Utah on 5/4/2018.

Eric Zuckerman is currently an ACTIVE member of the Utah State Bar in good standing. "Good standing" is defined as a lawyer who is current in the payment of all Bar licensing fees, has met mandatory continuing legal education requirements, if applicable, and is not disbarred, presently on probation, suspended, or has not resigned with discipline pending, from the practice of law in this state.



Nancy J. Sylvester  
General Counsel  
Utah State Bar

No.2022 -962852  
verify by email at [cogsrequest@utahbar.org](mailto:cogsrequest@utahbar.org)



Supreme Court of Pennsylvania

CERTIFICATE OF GOOD STANDING

*Eric Cooper Zuckerman, Esq.*

DATE OF ADMISSION

*December 29, 2009*

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.



Witness my hand and official seal

Dated: April 7, 2022

*Elizabeth E. Zisk*

Elizabeth E. Zisk  
Chief Clerk

# Exhibit 4

**Alabama State Bar**

415 DEXTER AVENUE  
POST OFFICE BOX 671  
MONTGOMERY, AL 36101



**STATE OF ALABAMA**

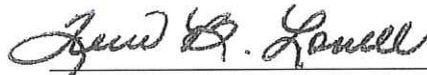
**COUNTY OF MONTGOMERY**

*I, Terri B. Lovell, Secretary of the Alabama State Bar and custodian of its records, hereby certify that Amanda Christine Bass has been duly admitted to the Bar of this State and is entitled to practice in all of the courts of this State including the Supreme Court of Alabama, which is the highest court of said state.*

*I further certify that Amanda Christine Bass was admitted to the Alabama State Bar September 30, 2015.*

*I further certify that the said Amanda Christine Bass is presently a member in good standing of the Alabama State Bar, having met all licensing requirements for the year ending September 30, 2022.*

*IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Alabama State Bar on this the 11th day of April, 2022.*

  
Terri B. Lovell, Secretary



# Exhibit 5

## Pinal County Superior Court

State of Arizona,  
Plaintiff

v.

Clarence Dixon,  
Defendant.

CASE # S1100CR202200692

SBA App #1013275

**NOTICE OF RECEIPT OF COMPLETE  
APPLICATION**

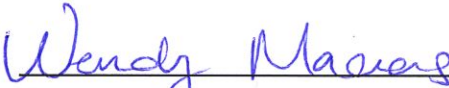
NOTICE IS HEREBY given by THE STATE BAR OF ARIZONA that it has received the verified application from Eric Cooper Zuckerman.

In addition to this application, applicant has made the following applications to appear pro hac vice, pursuant to Rule 39, within the previous three (3) years:

Title of Matter	Court/Agency	Date	Granted?
-----------------	--------------	------	----------

Exhibit A, the original verified application and Exhibit B, the original Certificate(s) of Good Standing are attached hereto.

DATED this 12<sup>th</sup> day of April 2022



Wendy Macias  
Resource Center Specialist  
State Bar of Arizona





Attn: Pro Hac Vice Dept  
P.O. Box 842699  
Los Angeles, CA 90084-2699  
Phone: 602-340-7239

For Official Use Only

App# 1013275  
Bar Number# P235015

Pro Bono

Overnight or Hand Delivery:  
4201 N. 24th St., Ste 100  
Phoenix, AZ 85016-6266

## Application for Appearance Pro Hac Vice

**PART I: Applicant Information**Name of Applicant: Eric Cooper ZuckermanFirm/Company Name: Office of the Federal Public Defender, District of ArizonaOffice Address: 850 West Adams Street, Suite 201Telephone: 602-382-2816 Fax: 602-382-2801 Email Address: eric\_zuckerman@fd.orgResidence Address: 3069 W 11th Avenue Cir, Broomfield CO 80020Title of cause or case where applicant seeks to appear: State of Arizona v Clarence DixonDocket Number: S1100CR202200692Court, Board, or Administrative Agency: Superior Court, Pinal CountyParty on whose behalf applicant seeks to appear: Clarence Dixon

Pursuant to Arizona Supreme Court Rule 39(a)(2), the applicant shall complete the information below:

Courts to Which Applicant Has Been Admitted: <small>(Attach additional pages if necessary)</small>	Date of Admission:	Bar Number:
<u>Pennsylvania</u>	<u>12/29/2009</u>	<u>307979</u>
<u>Utah</u>	<u>05/04/2018</u>	<u>16742</u>
_____	_____	_____
_____	_____	_____

☒ Applicant is a member in good standing in such courts.☒ Applicant is not currently disbarred or suspended in any court.

Applicant ☐ is / ☒ is not (select one) currently subject to any pending disciplinary proceeding or investigation by any court, agency or organization authorized to discipline attorneys at law. If yes, specify the jurisdiction, nature of investigation and contact information of the disciplinary authority investigating on an additional page.

In the preceding three (3) years, applicant has filed applications to appear as counsel under Ariz. R. Sup. Ct., Rule 39(a) in the following:

Title of Matter:	Docket #:	Court or Agency:	App Granted? (Y/N)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

This case or cause ☐ is / ☒ is not (select one) a related or consolidated matter for which applicant has previously applied to appear pro hac vice in Arizona. If this matter is a related or consolidated with any previous application, Applicant certifies that he/she will review and comply with appropriate rules of procedure as required in the underlying cause.

If applicable, please provide related or consolidated matter application or docket# \_\_\_\_\_





**Verified Addendum to Application for Admission Pro Hac Vice**

In support of a waiver of the pro hac vice filing fees and pursuant to Arizona Supreme Court Rule 39, I certify that all clients represented in this action are indigent and that no attorney fee shall be paid by the client.

4/7/2022

Date signed

A handwritten signature in black ink, appearing to read 'EZ', is written over a horizontal line.

Eric Zuckerman

Assistant Federal Public Defender  
Office of the Federal Public Defender  
District of Arizona  
801-524-6043  
eric\_zuckerman@fd.org

## COVID-19 Temporary Verification

This Form is intended to be a required supplement to State Bar of Arizona applications and certifications during the period of pandemic health advisories and the related emergency orders of the federal government, the Governor of Arizona, and the Supreme Court of Arizona. This unsworn declaration, under penalty of perjury, is to be submitted in lieu of a notarized verification pursuant to Arizona Rules of Civil Procedure, Rule 80(c).

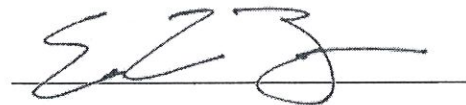
State of Arizona )  
 ) ss.  
County of Pinal )

I, Eric Zuckerman, a member of the State Bar of UT/PA, submit this unsworn verification in support of my:

- ☐ Resignation of Membership
- ☒ Application for Appearance *Pro Hac Vice*
- ☐ Application for In-House Counsel certification
- ☐ Application for transfer to Inactive / Retired status
- ☐ Application for Reinstatement after Summary Suspension by the Board of Governors

I hereby declare and verify, under the penalty of perjury, that the foregoing information and that on the applicable application form is true and correct.

Dated: 4/9/2022

  
Attorney signature

## ***CERTIFICATE OF GOOD STANDING***

\*This document expires 60 days from the date of issuance\*

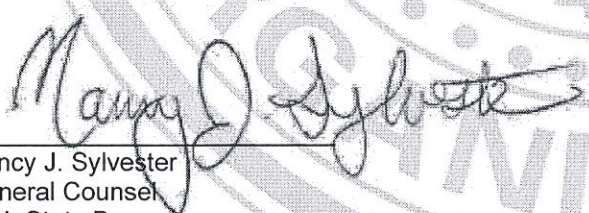
Issued on 4/7/2022

To Whom it May Concern:

Re: CERTIFICATE OF GOOD STANDING for Eric Zuckerman

This is to certify that Eric Zuckerman, Utah State Bar No. 16742 was admitted to practice law in Utah on 5/4/2018.

Eric Zuckerman is currently an ACTIVE member of the Utah State Bar in good standing. "Good standing" is defined as a lawyer who is current in the payment of all Bar licensing fees, has met mandatory continuing legal education requirements, if applicable, and is not disbarred, presently on probation, suspended, or has not resigned with discipline pending, from the practice of law in this state.



Nancy J. Sylvester  
General Counsel  
Utah State Bar

No.2022 -962852  
verify by email at [cogsrequest@utahbar.org](mailto:cogsrequest@utahbar.org)





Supreme Court of Pennsylvania

**CERTIFICATE OF GOOD STANDING**

***Eric Cooper Zuckerman, Esq.***

**DATE OF ADMISSION**

***December 29, 2009***

The above named attorney was duly admitted to the bar of the Commonwealth of Pennsylvania, and is now a qualified member in good standing.



**Witness my hand and official seal**

**Dated: April 7, 2022**

*Elizabeth E. Zisk*

---

Elizabeth E. Zisk  
Chief Clerk